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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION)
OPIATE LITIGATION) MDL NO. 2804
-----) HON. DAN A. POLSTER
THIS DOCUMENT RELATES TO) Case No. 1:17-md-2804
ALL CASES)
-----)

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The videotaped 30(b) (6) deposition of H.D. SMITH by and through GEORGE EUSON, called for examination, taken pursuant to the Federal Rules of Civil Procedure of the United States District Courts pertaining to the taking of depositions, taken before JULIANA F. ZAJICEK, a Registered Professional Reporter and a Certified Shorthand Reporter, at the offices of Brown, Hay & Stephens, LLP, Suite 800, 205 South Fifth Street, Springfield, Illinois, on November 27, 2018, at 9:13 a.m.

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<p style="text-align: center;">Page 2</p> <p>1 PRESENT: 2 ON BEHALF OF THE PLAINTIFFS: 3 MORGAN & MORGAN 4 76 South Laura Street, Suite 1100 Jacksonville, Florida 32202 904-361-0012 5 BY: JAMES D YOUNG, ESQ jyoung@forthepeople.com; 6 RENEE COOK, ESQ rcook@forthepeople.com; 7 -and- 8 MORGAN & MORGAN 9 201 North Franklin Street Tampa Florida 33602 10 813-679-9217 JUAN MARTINEZ, ESQ 11 juanmartinez@forthepeople.com 12 ON BEHALF OF THE H D SMITH ENTITIES: 13 BARNES & THORNBURG LLP 14 11 South Meridian Street Indianapolis, Indiana 46204 15 317-231-7501 BY: WILLIAM E PADGETT, ESQ 16 william.padgett@btlaw.com; WILLIAM J LEEDER, III, ESQ bill.leeder@btlaw.com 17 ON BEHALF OF AMERISOURCEBERGEN CORPORATION AND 18 AMERISOURCEBERGEN DRUG CORPORATION: 19 REED SMITH LLP 20 10 South Wacker Drive, 40th Floor Chicago, Illinois 60606-7502 312-207-2834 21 BY: M PATRICK YINGLING, ESQ mpyingling@reedsmith.com 22 23 24</p>	<p style="text-align: center;">Page 4</p> <p>1 PRESENT: (Continued) 2 ON BEHALF OF WALMART INC : 3 JONES DAY 77 West Wacker Drive 4 Chicago, Illinois 60601-1692 312-269-4164 5 BY: NICOLE LANGSTON, ESQ (Telephonically) nlangston@jonesday.com 6 7 ON BEHALF OF HBC SERVICES: 8 MARCUS & SHAPIRA LLP One Oxford Centre, 35th Floor 9 Pittsburgh, Pennsylvania 15219 412-471-3490 10 BY: PAUL M MANNIX, ESQ (Telephonically) pmannix@marcus-shapira.com 11 12 13 14 THE VIDEOGRAPHER: 15 MR ANTHONY MICHELETTTO, Golkow Litigation Services 16 17 18 19 20 REPORTED BY: JULIANA F ZAJICEK, C S R NO 84-2604 21 22 23 24</p>
<p style="text-align: center;">Page 3</p> <p>1 PRESENT: (Continued) 2 ON BEHALF OF MALLINCKRODT LLC AND SPECGX LLC: 3 ROPES & GRAY LLP 1211 Avenue of the Americas 4 New York, NY 10036-8704 212-596-9451 5 BY: HAYDEN MILLER, ESQ (Telephonically) hayden.miller@ropesgray.com 6 7 ON BEHALF OF CARDINAL HEALTH, INC : 8 WILLIAMS & CONNOLLY LLP 725 Twelfth Street, N W 9 Washington, D C 20005 202-434-5000 10 BY: ANDREW C McBRIDE, ESQ amcbride@wc.com 11 12 ON BEHALF OF PRESCRIPTION SUPPLY, INC : 13 PELINI CAMPBELL & WILLIAMS LLC 8040 Cleveland Avenue NW, Suite 400 14 North Canton, Ohio 44720 330-305-6400 15 BY: KRISTEN E CAMPBELL, ESQ (Telephonically) kec@pelini-law.com 16 17 ON BEHALF OF McKESSON: 18 COVINGTON & BURLING, LLP 850 Tenth Street, NW 19 Washington, D C 20001 202-662-5531 20 BY: MEGHAN MONAGHAN, ESQ (Telephonically) mmonaghan@cov.com 21 22 23 24</p>	<p style="text-align: center;">Page 5</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p style="text-align: center;">INDEX</p> <p>1 WITNESS: PAGE: 2 GEORGE EUSON 3 EXAM BY MR YOUNG 13 4 5 6 7 8 PREVIOUSLY MARKED EXHIBITS 9 EXHIBIT FIRST TIME REFERRED TO 10 HDS-EUSON-A Amended First Notice of 17 Deposition Pursuant to Rule 30(b)(6) and Document 11 Request Pursuant to Rule 30(b)(2) and Rule 34 to 12 Defendant Miami-Luken, Inc 13 14 HDS-EUSON-B Amended Second Notice of 17 Deposition Pursuant to Rule 30(b)(6) and Document 15 Request Pursuant to Rule 30(b)(2) and Rule 34 to 16 Defendant H S Smith, LLC, d/b/a HD Smith 17 18 HDS-EUSON-001 Schedule II Controlled 18 Substances Definition; HDS_Euson_00001 - 003 19 20 HDS-EUSON-002 Controlled Substances Act, 28 Title 21 USC Section 823(b)(1) - (b)(5); HDS_Euson_00004 - 012 21 22 HDS-EUSON-003 Security Requirements for 39 Controlled Substances, Title 21 CFR Section 1301 71(a); HDS_Euson_00013 - 014 23 24</p>

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<p style="text-align: center;">Page 10</p> <p>1 PREVIOUSLY MARKED EXHIBITS (Continued) 2 EXHIBIT FIRST TIME REFERRED TO 3 HDS-EUSON-055 E-mail dated September 7, 313 4 2017, from Teva to H.D. 5 Smith requesting information 6 from 3 of H.D. Smith's 7 customers - unable to 8 release Oxy; 9 HDS_Euson_00313 - 317 10 HDS-EUSON-057 Profit Sharing of Fentanyl 321 11 between Actavis and H.D. 12 Smith; HDS_Euson_00668 - 673 13 HDS-EUSON-058 E-mail dated April 19, 2006 323 14 to George Euson from 15 Diversion Investigator Lynda 16 Eleazer re: Budget Drug & 17 Wellness Center's Suspended 18 DEA Numbers; 19 HDS_Euson_00674 - 675 20 HDS-EUSON-060 US Court of Appeals Opinion 325 21 re: Masters vs. DEA, Decided 22 June 30, 2017; 23 HDS_Euson_00685 - 722 24</p>	<p style="text-align: center;">Page 12</p> <p>1 MR PADGETT: Bill Padgett on behalf of 2 H D Smith and George Euson to the extent it wades 3 into individual questions 4 THE COURT REPORTER: If there is anyone on the 5 phone, would you please introduce yourselves 6 MR MILLER: Well, yeah, Hayden Miller from 7 Ropes & Gray on behalf of Mallinckrodt and SpecGx 8 MS LANGSTON: Nicole Langston from Jones Day on 9 behalf of Walmart 10 MR MANNIX: Paul Mannix on behalf of HBC 11 Services 12 MS MONAGHAN: Meghan Monaghan from Covington on 13 behalf of McKesson 14 MS CAMPBELL: Kristen Campbell for Prescriptioncription 15 Supply, Inc 16 THE VIDEOGRAPHER: Our witness today is George 17 Euson Our court reporter is Juliana Zajicek Please 18 swear in the witness 19 (WHEREUPON, the witness was duly 20 sworn) 21 GEORGE EUSON, 22 called as a witness herein, having been first duly 23 sworn, was examined and testified as follows: 24 EXAMINATION</p>
<p style="text-align: center;">Page 11</p> <p>1 THE VIDEOGRAPHER: We are now on the record. My 2 name is Anthony Micheletto. I am a videographer for 3 Golkow Litigation Services. 4 Today's date is November 27th, 2018. The 5 time is 9:13 a.m. as indicated on the video screen. 6 This video deposition is being held in 7 Springfield, Illinois in the matter of In Re National 8 Prescription Opiate Litigation, MDL 2804, in the 9 United States District Court for the Northern District 10 of Ohio, Eastern Division. 11 Will counsel please identify themselves 12 for the video record. 13 MR. YOUNG: James Young on behalf of the 14 Plaintiffs. 15 MS. COOK: Renee Cook on behalf of the 16 Plaintiffs. 17 MR. MARTINEZ: Juan Martinez on behalf of the 18 Plaintiffs. 19 MR. McBRIDE: Andrew McBride on behalf of 20 Cardinal. 21 MR. YINGLING: Patrick Yingling for 22 AmerisourceBergen. 23 MR. LEEDER: Bill Leeder on behalf of 24 H.D. Smith.</p>	<p style="text-align: center;">Page 13</p> <p>1 BY MR. YOUNG: 2 Q. Good morning, Mr. Euson. My name is James 3 Young and I am here on behalf of the Plaintiffs in the 4 national opioid litigation, as the videographer just 5 relayed. 6 Can you state and spell your last name for 7 the record? 8 A. Yes. It is Euson, E-u-s-o-n. 9 Q. And you're appearing here today as the 10 corporate designee for H.D. Smith LLC, is that 11 correct? 12 A. Correct. 13 Q. And you're familiar with Rule 30(b)(6)? 14 A. I am. 15 Q. You've appeared as a corporate designee 16 under Rule 30(b)(6) for H.D. Smith in previous 17 litigation? 18 A. I have. 19 Q. How many occasions did you testify as the 20 30(b)(6) witness for H.D. Smith previously? 21 A. Twice, I believe. 22 Q. I'm going to just go through a few basic 23 rules just to -- I -- I know you've been deposed 24 several times. I just want to make sure that you're</p>

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<p style="text-align: center;">Page 14</p> <p>1 up to snuff on -- on how this will go. We'll try not 2 to speak over each other. I know from reading your 3 prior transcripts that's not really an issue with you. 4 You want to give your counsel and any 5 other counsel appearing here today a chance to make an 6 objection, though unless they specifically instruct 7 you not to answer, you should proceed with answering 8 the question that's asked. 9 This is videotaped, as you can see by the 10 cameras around. You are certainly welcome to make any 11 facial gestures and nod or shrug your shoulders, but 12 we'd ask that you always give a verbal response to 13 every question. There may come times when I ask a 14 question that doesn't make sense, that my wife reminds 15 me about all of the time. I'll try to rephrase it in 16 a way that makes sense for you, just let me know you 17 don't understand the question and I'm certainly try to 18 rephrase it in a way that -- that helps you get to an 19 answer. 20 If you don't know the answer to a 21 question, let me know that as well and we'll try to 22 identify through your testimony the correct person who 23 is in a position to answer that for H.D. Smith. 24 And -- and finally, if -- if you need a</p>	<p style="text-align: center;">Page 16</p> <p>1 of Deposition, is that correct? 2 MR. PADGETT: A through N? 3 MR. YOUNG: Yes, A through N. 4 BY THE WITNESS: 5 A. Yes. 6 BY MR. YOUNG: 7 Q. And in the Amended Second Notice you are 8 prepared or your -- your -- your counsel has agreed to 9 answer certain of those questions in writing, and 10 you're here today to answer a subset of those 11 questions. And I have those designated as 5, 6, 7, 12 10, 11, 12, 15 through 21. 13 Is that your recollection as well? 14 MR. PADGETT: He'd -- he'd have to see them. 15 THE WITNESS: Yeah. 16 BY MR. YOUNG: 17 Q. And that was -- that was going to be the 18 next step is I'm going to -- I'm going to hand you a 19 copy of the Amended Second Notice of Deposition, if 20 you can just take a look at that. And see if that 21 refreshes your recollection about what you are 22 prepared to -- 23 THE WITNESS: What's the topic? 24 MR. PADGETT: 5, 6, 7, 10, 11, 12.</p>
<p style="text-align: center;">Page 15</p> <p>1 break at any time, you know, bathroom break or water 2 or collect your thoughts or you want to talk to 3 counsel, just let us know and we'll try to facilitate 4 that as quickly as possible. 5 Tomorrow we are scheduled to take your 6 deposition on an individual basis as a fact witness. 7 So today I'd ask you to frame your answers on behalf 8 of H.D. Smith. In essence, you are H.D. Smith today. 9 There may come times in these questions 10 where we are going to seek testimony of George Euson 11 the individual to color some of the background of your 12 answers, so I know that's -- that can be a bit 13 confusing. I'm going to try my best to make it clear 14 that we are seeking H.D. Smith testimony today and 15 tomorrow will be George Euson testimony. 16 Any questions before we dig in? 17 A. No. 18 Q. Okay. You have seen, I assume, the 19 Amended First and Amended Second 30(B)(6) Notices of 20 Deposition before today? 21 A. I have. 22 Q. And you're prepared today to answer 23 questions, I think all of the questions -- or -- or 24 subjects that were framed in the Amended First Notice</p>	<p style="text-align: center;">Page 17</p> <p>1 THE WITNESS: Is that 15? 2 On this? These here? 3 MR. PADGETT: Um-hum. 4 BY THE WITNESS: 5 A. Okay. 6 BY MR. YOUNG: 7 Q. Okay. And I'm going to hand you also just 8 a copy of the Amended -- you can keep that one. 9 A. Okay. 10 Q. This is the Amended First Notice. This is 11 the A through N that you are prepared to testify on. 12 And we had premarked -- we are going to go 13 through a number of documents today. We have 14 premarked them and numbered them as exhibits that go 15 in seq -- sequential order and we overlooked these two 16 documents in that numbering, so we've asked the court 17 reporter to number and attach these as an exhibit to 18 this deposition calling these Exhibits A and B, but 19 all other exhibits are going to be referred to in 20 numerical sequence from 1 through 60. 21 So just -- just so you know, when I refer 22 to an exhibit, and I'll -- I'll either hand you a 23 document or -- or refer to one that's in front of you, 24 it will be Euson Exhibit 001, I'll just call it</p>

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<p style="text-align: right;">Page 18</p> <p>1 Exhibit 1.</p> <p>2 A. Okay.</p> <p>3 Q. Okay. So, before we jump into the</p> <p>4 documents, I just want to touch briefly on your</p> <p>5 background, just to understand a little bit how you</p> <p>6 got to H.D. Smith and what puts you in the position to</p> <p>7 answer as the corporate designee under Rule 30(b)(6).</p> <p>8 Did you happen to bring a copy of your CV</p> <p>9 or resume with you today?</p> <p>10 A. I did not.</p> <p>11 Q. Is that something -- and -- and -- and</p> <p>12 maybe this is better asked of counsel.</p> <p>13 MR. YOUNG: Is that something that has been</p> <p>14 previously introduced in -- in discovery? Do we have</p> <p>15 a copy of his --</p> <p>16 MR. PADGETT: I don't think it's been requested.</p> <p>17 MR. LEEDER: Yeah, I don't think it's been</p> <p>18 requested, but the answer is no, we haven't produced</p> <p>19 it.</p> <p>20 BY MR. YOUNG:</p> <p>21 Q. Okay.</p> <p>22 So it's my understanding that you actually</p> <p>23 have a few different time periods where you were with</p> <p>24 H.D. Smith and then you left and went and did</p>	<p style="text-align: right;">Page 20</p> <p>1 was gone from H.D. Smith I was under a consulting</p> <p>2 contract also. And then I went back to H.D. Smith in</p> <p>3 May of 2016 to present.</p> <p>4 Q. And you are currently employed by</p> <p>5 H.D. Smith LLC?</p> <p>6 A. I am.</p> <p>7 Q. And what is the title that you hold at</p> <p>8 H.D. Smith?</p> <p>9 A. Vice president of corporate compliance and</p> <p>10 security.</p> <p>11 Q. Is that the title that you held prior to</p> <p>12 your most recent departure?</p> <p>13 A. The first time and second time I was</p> <p>14 director of -- of corporate compliance and security.</p> <p>15 Q. Did your job duties change with this new</p> <p>16 title?</p> <p>17 A. Not necessarily.</p> <p>18 Q. It was just a promotion?</p> <p>19 A. Promotion, yeah.</p> <p>20 Q. What are your current duties for</p> <p>21 H.D. Smith as the vice president of compliance?</p> <p>22 A. I oversee all -- all compliance as far as</p> <p>23 related to due diligence, our order monitoring</p> <p>24 program. I also oversee our licensing, which is all</p>
<p style="text-align: right;">Page 19</p> <p>1 something else.</p> <p>2 Could you just ex -- explain for us how</p> <p>3 you came to H.D. Smith and when you left, which</p> <p>4 periods of time?</p> <p>5 A. I came to H.D. Smith in -- in November</p> <p>6 of 2005. Prior to that I worked about four years as</p> <p>7 director of security and compliance for a company</p> <p>8 called D&K Healthcare in St. Louis. And in '05 they</p> <p>9 were purchased by McKesson Corporation.</p> <p>10 I then went to work for H.D. Smith as</p> <p>11 director of security and compliance. I was there from</p> <p>12 November 2005 to end of May 2008. And then I went</p> <p>13 into a private business, family business, until</p> <p>14 April 2009. I came back to H.D. Smith.</p> <p>15 Just to clarify, during that time that I</p> <p>16 was gone, I was under a consulting contract with</p> <p>17 H.D. Smith. So I left but I was still involved with</p> <p>18 H.D. Smith.</p> <p>19 I worked at H.D. Smith from April of 2009</p> <p>20 until October of 2013. I then left for another</p> <p>21 business within the industry called Pro Compliance. I</p> <p>22 worked there for about a year and then I started my</p> <p>23 own consulting company in the pharmaceutical area.</p> <p>24 Also during that time when I was -- when I</p>	<p style="text-align: right;">Page 21</p> <p>1 of our facility licensing, accreditation, such as VAWD</p> <p>2 accreditations throughout all of our facilities.</p> <p>3 One of the people that work for me also is</p> <p>4 in charge of recalls. We do ARCos reporting for the</p> <p>5 company. And then we also complete all of the -- if</p> <p>6 we get subpoenas or requests for information in from</p> <p>7 either industry or government, I have people that work</p> <p>8 for me that -- that put that information together.</p> <p>9 And then we also do -- we are also in</p> <p>10 charge of internal compliance at our facilities. So</p> <p>11 we -- we are in charge of doing audits of our</p> <p>12 facilities to make sure that they are in compliance</p> <p>13 either with DEA, OSHA, FDA requirements, such as that.</p> <p>14 So pretty much anything -- and -- and then</p> <p>15 physical security of all of our facilities.</p> <p>16 Q. Is it fair to say that you are the most</p> <p>17 senior person at H.D. Smith with compliance</p> <p>18 responsibilities?</p> <p>19 A. Yes.</p> <p>20 Q. Who do you report to?</p> <p>21 A. Right now I report to David May at</p> <p>22 AmerisourceBergen. He is the vice president of</p> <p>23 diversion control. Previously I had reported to Tom</p> <p>24 Twitty who was the senior vice president at</p>

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<p style="text-align: center;">Page 22</p> <p>1 H.D. Smith.</p> <p>2 Q. Is Tom Twitty still with H.D. Smith?</p> <p>3 A. Yes.</p> <p>4 Q. Is he in a compliance capacity?</p> <p>5 A. Not necessarily. He is mostly operations,</p> <p>6 limited regulatory, compliance responsibilities. I</p> <p>7 just reported to him.</p> <p>8 Q. Okay. And, but you would -- you're --</p> <p>9 you're of the belief that you have more background</p> <p>10 information about compliance as it pertains to</p> <p>11 H.D. Smith than Tom Twitty?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. You mentioned Pro Compliance.</p> <p>14 Is Pro Compliance a -- a contractor or a</p> <p>15 vendor for H.D. Smith?</p> <p>16 A. It is.</p> <p>17 Q. And at some point you went and worked for</p> <p>18 Pro Compliance.</p> <p>19 Did you ever consider that to be a</p> <p>20 potential conflict --</p> <p>21 A. No.</p> <p>22 Q. -- between Pro Compliance and H.D. Smith?</p> <p>23 MR. PADGETT: Object to form.</p> <p>24 He answered.</p>	<p style="text-align: center;">Page 24</p> <p>1 and OTC and the other products you just mentioned?</p> <p>2 A. No.</p> <p>3 Q. And --</p> <p>4 A. We -- caveat that. I mean, there --</p> <p>5 we've -- there are some ancillary businesses. I think</p> <p>6 they did a little bit of packaging. There was a</p> <p>7 specialty division that they had, a third-party</p> <p>8 network that was part of the company that no longer</p> <p>9 is.</p> <p>10 Q. So the current iteration of H.D. Smith LLC</p> <p>11 is only in the distribution business?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Okay. What type of pharmaceutical</p> <p>14 products does H.D. Smith distribute, just -- just</p> <p>15 generally? I know that there is a vast array of</p> <p>16 products that are out there. If you could just</p> <p>17 briefly describe.</p> <p>18 A. Pretty much most of the brand or generic</p> <p>19 pharmaceutical products that are in the market,</p> <p>20 including controlled substances and non-controlled</p> <p>21 substances.</p> <p>22 Q. Is there --</p> <p>23 A. Full line wholesaler, full line.</p> <p>24 Q. Sorry.</p>
<p style="text-align: center;">Page 23</p> <p>1 BY MR. YOUNG:</p> <p>2 Q. I'm sorry. Was it?</p> <p>3 A. No, it was not.</p> <p>4 Q. Was the acquisition of H.D. Smith by</p> <p>5 Amerisource, do you -- and I -- I think you mentioned</p> <p>6 that you now report to an Amerisource employee.</p> <p>7 Do you know whether or not you are going</p> <p>8 to maintain your position as vice president of</p> <p>9 compliance at H.D. Smith?</p> <p>10 Has anyone mentioned that -- that to you?</p> <p>11 A. Not right now. The -- I'm retained until</p> <p>12 August 2nd of 2019 in that capacity.</p> <p>13 Q. And -- and what will happen after</p> <p>14 August 2nd?</p> <p>15 A. I don't know.</p> <p>16 Q. Okay. Okay. Fair enough.</p> <p>17 So H.D. Smith is in the business of</p> <p>18 distributing pharmaceutical products. Is that fair</p> <p>19 and accurate?</p> <p>20 A. Pharmaceutical products, OTC, health and</p> <p>21 beauty, pretty much anything you would find in a</p> <p>22 pharmacy.</p> <p>23 Q. Is H.D. Smith LLC in any other type of</p> <p>24 businesses beyond the distribution of pharmaceuticals</p>	<p style="text-align: center;">Page 25</p> <p>1 A. I'm sorry. I didn't mean to walk over</p> <p>2 you.</p> <p>3 Q. I think I did it to you. Apologies.</p> <p>4 Is there any type of regulation over these</p> <p>5 products, government regulation?</p> <p>6 A. Which products are you talking about?</p> <p>7 Q. Pharmaceutical products.</p> <p>8 A. Yes.</p> <p>9 Q. What type of regulations exist for these</p> <p>10 products?</p> <p>11 MR. PADGETT: Object to form.</p> <p>12 BY THE WITNESS:</p> <p>13 A. Can you be a little bit more specific,</p> <p>14 because there is a lot of them?</p> <p>15 BY MR. YOUNG:</p> <p>16 Q. Sure.</p> <p>17 So, let's begin with schedules of</p> <p>18 pharmaceutical products.</p> <p>19 Does H.D. Smith distribute any Schedule II</p> <p>20 pharmaceutical products?</p> <p>21 A. Yes.</p> <p>22 Q. Are there particular regulations that</p> <p>23 apply to Schedule II pharmaceutical products?</p> <p>24 A. There is a lot of different regulations as</p>

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<p style="text-align: center;">Page 26</p> <p>1 far as storage, security, you know, from -- from 2 receiving to -- to distribution.</p> <p>3 Q. And -- and which are the entities that 4 regulate Schedule II pharmaceutical products?</p> <p>5 A. DEA and FDA.</p> <p>6 Q. Are there any state entities that 7 specifically regulate Schedule IIIs?</p> <p>8 A. There are state regulations that -- that 9 touch on the requirements for -- for scheduled drugs. 10 DEA is the main regula- -- regulatory agency that 11 controls Schedule IIIs.</p> <p>12 Q. I'm going to show you a document that 13 is -- been premarked as Euson Deposition Exhibit 1, 14 0001.</p> <p>15 I'm going to give you a little bit of 16 time.</p> <p>17 A. Is there something you specifically wanted 18 me to look at?</p> <p>19 Q. I was going to give you some time to take 20 a look at it.</p> <p>21 A. Oh, okay.</p> <p>22 Q. Are you familiar with the information 23 contained in Exhibit 1?</p> <p>24 A. Yes.</p>	<p style="text-align: center;">Page 28</p> <p>1 substances under Schedule II have a high potential for 2 abuse which may lead to severe psychological or 3 physical dependence?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. I'm next going to show you a 6 document that has been premarked as Exhibit 2, and it 7 is actually a bit hard to --</p> <p>8 MR. PADGETT: Do you want these back?</p> <p>9 MR. YOUNG: You -- actually, yeah, I'll take 10 them back. You already have a copy? Yes, I'll take 11 them back.</p> <p>12 BY MR. YOUNG:</p> <p>13 Q. This next one is been premarked as 14 Exhibit 2, and it is a bit longer than the last one, 15 though, again, it has been pre-highlighted. I'm just 16 going to give you a chance just to take a look at the 17 highlighted portions.</p> <p>18 I should mention, by the way, that the 19 last exhibit that you looked at was actually from the 20 DEA Diversion Control website, and this exhibit is 21 also from the DEA Diversion Control website.</p> <p>22 Just let me know when you're --</p> <p>23 A. Okay.</p> <p>24 Just that one page?</p>
<p style="text-align: center;">Page 27</p> <p>1 Q. On Page 2 of Exhibit 1, there is a 2 definition of controlled substances that has been 3 pre-highlighted on the copy that you have.</p> <p>4 Can you read that into the record for us?</p> <p>5 A. "Schedule II/IIN Controlled Substances 6 (2/N): Substances in this schedule have a high 7 potential for abuse which may lead to severe 8 psychological or physical dependence. Examples of 9 Schedule II narcotics include: hydromorphone 10 (Dilaudid), methadone, meperidine, oxycodone 11 (Percocet) and fentanyl. Other Schedule II narcotics 12 include: morphine, opium, codeine and hydrocodone. 13 Examples of IIN stimulants include" -- do you want me 14 to read that or just that?</p> <p>15 Q. That's fine. Thank you. Just the 16 highlighted portion.</p> <p>17 A. All right.</p> <p>18 Q. Does H.D. Smith have any reason to 19 disagree or dispute with the statements that are made 20 on Exhibit 1 about controlled substances?</p> <p>21 A. With regards to the highlighted areas?</p> <p>22 Q. Yes.</p> <p>23 A. No.</p> <p>24 Q. So H.D. Smith agrees that controlled</p>	<p style="text-align: center;">Page 29</p> <p>1 Q. I believe so, yes.</p> <p>2 Can you tell me -- the highlighted 3 section, which this is from Title 21 USC Section 823 4 sub (b), sub (1) through (5), can you tell me whether 5 or not that section, and we'll read it in a second, 6 whether or not it applies to H.D. Smith?</p> <p>7 A. It would.</p> <p>8 Q. Is H.D. Smith a -- a registered 9 distributor of Schedule II pharmaceutical products in 10 the United States?</p> <p>11 A. We are.</p> <p>12 Q. Can you read for us the first paragraph of 13 subsection (b) which is highlighted on Exhibit 2?</p> <p>14 A. Subsection (b): Distributors of 15 controlled substances in Schedule I or II. And it 16 says:</p> <p>17 "The Attorney General shall register an 18 applicant to distribute a controlled substance in 19 Schedule I or II unless he determines that the 20 issuance of such a registration is inconsistent with 21 the public interest. In determining the public 22 interest, the following factors shall be considered: 23 (1) maintenance of effective controls against diversion of particular controlled substances</p>

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<p style="text-align: center;">Page 30</p> <p>1 into other than legitimate medical, scientific, and 2 industrial channels;</p> <p>3 "(2) compliance with applicable State and 4 local law;</p> <p>5 "(3) prior conviction record of applicant 6 under Federal or State laws relating to the 7 manufacture, distribution, or dispensing of such 8 substances;</p> <p>9 "(4) past experience in the distribution 10 of controlled substances," excuse me, "and 11 "(5) such other factors as may be relevant 12 to and consistent with the public health and safety."</p> <p>13 Q. And, again, H.D. Smith has no reason to 14 dispute or disagree that these are the requirements 15 for distributors like H.D. Smith?</p> <p>16 A. Yes.</p> <p>17 Q. And we are going to dig into a little bit 18 more throughout the documents and throughout your 19 deposition today whether or not H.D. Smith maintained 20 effective controls against diversion, it's a central 21 tenet of this case, but I'm just curious preliminarily 22 if you have an opinion on behalf of H.D. Smith whether 23 or not H.D. Smith, in fact, maintained effective 24 controls against diversion for Schedule II products</p>	<p style="text-align: center;">Page 32</p> <p>1 registered distributor of Schedule II controlled 2 substances?</p> <p>3 MR. PADGETT: Object to form, scope.</p> <p>4 BY THE WITNESS:</p> <p>5 A. Could you repeat that again?</p> <p>6 BY MR. YOUNG:</p> <p>7 Q. Sure.</p> <p>8 Has H.D. Smith ever failed to comply with 9 applicable state and local laws which apply to the 10 distribution of Schedule II controlled substances? It 11 is Section 2 of that section that I just read.</p> <p>12 MR. PADGETT: Same objection.</p> <p>13 BY THE WITNESS:</p> <p>14 A. Could you be a little bit more specific to 15 that?</p> <p>16 BY MR. YOUNG:</p> <p>17 Q. Is H.D. Smith aware of any prior instances 18 where it failed to comply with state laws?</p> <p>19 MR. PADGETT: Go ahead.</p> <p>20 BY THE WITNESS:</p> <p>21 A. I'm trying to think. You know, I don't 22 know how specific you want to get on that, on state 23 laws. I mean, there has been issues in some states 24 where we have been cited for some violations.</p>
<p style="text-align: center;">Page 31</p> <p>1 throughout its tenure?</p> <p>2 MR. PADGETT: I'll object to form. He can 3 answer.</p> <p>4 BY THE WITNESS:</p> <p>5 A. Could you repeat that?</p> <p>6 BY MR. YOUNG:</p> <p>7 Q. Sure.</p> <p>8 Is it your opinion here today or your --</p> <p>9 your testimony today that H.D. Smith maintained 10 effective controls against diversion of Schedule II 11 controlled substances throughout its tenure as a 12 pharmaceutical distributor?</p> <p>13 MR. PADGETT: Same objection.</p> <p>14 BY THE WITNESS:</p> <p>15 A. We take our responsibility to maintain 16 effective controls against diversion and we have done 17 so.</p> <p>18 BY MR. YOUNG:</p> <p>19 Q. Has there ever been an instance in which 20 H.D. Smith has failed to maintain effective controls 21 against diversion?</p> <p>22 A. Not to my knowledge.</p> <p>23 Q. Has H.D. Smith ever failed to comply with 24 applicable state or local law with regard to being a</p>	<p style="text-align: center;">Page 33</p> <p>1 BY MR. YOUNG:</p> <p>2 Q. So H.D. Smith has violated state laws 3 before?</p> <p>4 MR. PADGETT: Object to form.</p> <p>5 He can answer.</p> <p>6 BY THE WITNESS:</p> <p>7 A. We have been cited for that.</p> <p>8 BY MR. YOUNG:</p> <p>9 Q. Is it your testimony today that you 10 resolved those investigations or enforcement actions 11 but did not actually violate the laws?</p> <p>12 MR. PADGETT: Same objection.</p> <p>13 BY THE WITNESS:</p> <p>14 A. We received citations. We did not have 15 any actions against our registration or -- any actions 16 against our registration.</p> <p>17 BY MR. YOUNG:</p> <p>18 Q. Has H.D. Smith ever had its license 19 suspended or revoked in any state?</p> <p>20 A. It has not.</p> <p>21 Q. Has the DEA or FDA or Department of 22 Justice ever instituted an enforcement action or 23 investigation against H.D. Smith?</p> <p>24 A. Can you be more specific?</p>

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<p style="text-align: center;">Page 34</p> <p>1 Q. Are you aware of any instance in which the 2 DEA has instituted an enforcement action or 3 investigation against H.D. Smith? 4 MR. PADGETT: I'll object to form. 5 BY THE WITNESS: 6 A. DEA in -- instituted an investigation in 7 our Kentucky facility, our Kentucky distribution 8 center back in 2010 with an administrative inspection 9 warrant. 10 BY MR. YOUNG: 11 Q. And -- 12 A. -- and subpoena. 13 Q. And what was the result of that action? 14 A. No action taken. 15 Q. Is that the only instance in which the DEA 16 has investigated H.D. Smith? 17 A. We've had cyclical routine inspections. 18 And I don't know how -- what DEA considers those, if 19 they are investigations. You know, to us they were 20 cyclic inspections. There was a -- a lawsuit that we 21 were involved with with -- with DEA, SafeScript case. 22 I don't know if I'd consider that an investigation or 23 not. 24 Q. How about the state enforcement</p>	<p style="text-align: center;">Page 36</p> <p>1 BY MR. YOUNG: 2 Q. What was the basis of that litigation? 3 MR. PADGETT: I'll object to form. 4 BY THE WITNESS: 5 A. I'm not a -- I'm not ex -- exactly sure. 6 BY MR. YOUNG: 7 Q. Let's go at it a different way. 8 A. So if you can -- 9 Q. Were you the chief compliance officer of 10 H.D. Smith at the time that that West Virginia 11 enforcement action was instituted? 12 MR. PADGETT: Object to form. 13 BY THE WITNESS: 14 A. I can't remember the exact dates that -- 15 that litigation covered and I was at H.D. Smith 16 for part of it and some not. 17 BY MR. YOUNG: 18 Q. So what was your understanding in your 19 compliance capacity as to why the State of West 20 Virginia Attorney General was bringing an 21 investigation or action against H.D. Smith? 22 MR. PADGETT: Object to form and scope. 23 BY MR. YOUNG: 24 Q. Do you not recall?</p>
<p style="text-align: center;">Page 35</p> <p>1 authorities, whatever they may be called, in -- in 2 some states I think it's the Board of Pharmacy, in 3 other states I think it may be called something else. 4 Have any state regulators or enforcers 5 instituted an investigation or litigation against 6 H.D. Smith? 7 MR. PADGETT: Object to form. 8 BY THE WITNESS: 9 A. We've had citations in California for -- 10 for some violations of not getting a pharmacist 11 signature on deliveries, such as that. Other than 12 that, unless you can be more specific -- 13 BY MR. YOUNG: 14 Q. Sure. 15 A. -- nothing is really coming to mind. 16 Q. How about the State of West Virginia, has 17 the State of West Virginia Attorney General's office 18 or Board of Pharmacy or any other regulatory entity 19 instituted an investigation or enforcement action 20 against H.D. Smith? 21 MR. PADGETT: Object to form. 22 BY THE WITNESS: 23 A. We were involved in litigation with the 24 State of West Virginia.</p>	<p style="text-align: center;">Page 37</p> <p>1 A. I'm just -- I -- it has been a while for 2 that. It was -- it was regarding controlled 3 substances in the state with the -- concerning the 4 opioid epidemic -- 5 Q. Do you -- 6 A. -- in the state. 7 Q. Do you know the allegations that the 8 Attorney General made in its Complaint against 9 H.D. Smith? 10 A. I believe one of them was a -- a failure 11 to report suspicious orders to the state. 12 Q. And as the -- and I'm going to use the 13 phrase "chief compliance officer." I understand at 14 the time that you may not have held that title but 15 that's essentially the role that you filled. 16 As the chief compliance officer for 17 H.D. Smith, what, if anything, did you do when you 18 learned of these allegations? 19 A. Well, as far as the allegation of failure 20 to report suspicious orders to the state, it was our 21 understanding that we were not required to as an 22 out-of-state wholesale distributor. I know that, 23 yeah, there was a lawsuit filed and went through the 24 same -- same steps as we are doing through here.</p>

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<p style="text-align: center;">Page 38</p> <p>1 Q. By "here," you mean the litigation that we 2 are here for?</p> <p>3 A. This litigation, yes.</p> <p>4 Q. Do you know the result of that litigation, 5 the West Virginia litigation?</p> <p>6 A. H.D. Smith paid a -- a fine. I'm not 7 exactly sure how much it was.</p> <p>8 Q. You're familiar with the Controlled 9 Substances Act of 1971?</p> <p>10 A. Yes.</p> <p>11 Q. And is the Controlled Substances Act of 12 1971 something that H.D. Smith must comply with?</p> <p>13 A. It is our responsibility to comply.</p> <p>14 Q. Does H.D. Smith recognize that if you 15 don't follow the rules in the Controlled Substances 16 Act that you can be fined by the Federal Government?</p> <p>17 A. Yes.</p> <p>18 Q. And similar question with regard to the 19 state Controlled Substances Act. Various states have 20 enacted their own versions of a Controlled Substances 21 Act.</p> <p>22 Is H.D. Smith of the opinion that it must 23 comply with the state Controlled Substances Acts in 24 the states in which it operates?</p>	<p style="text-align: center;">Page 40</p> <p>1 distributor?</p> <p>2 A. Our responsibility is to provide effective 3 controls against theft and diversion.</p> <p>4 Q. That wasn't my question.</p> <p>5 My question is: Has H.D. Smith complied 6 with this throughout its tenure as a pharmaceutical 7 distributor?</p> <p>8 MR. PADGETT: Object to form.</p> <p>9 BY MR. YOUNG:</p> <p>10 Q. In other words, have there been occasions 11 in which H.D. Smith has failed to provide effective 12 controls and procedures to guard against theft and 13 diversion of controlled substances?</p> <p>14 MR. PADGETT: Same objection.</p> <p>15 BY THE WITNESS:</p> <p>16 A. To the best of my knowledge, we have 17 complied with this regulation.</p> <p>18 BY MR. YOUNG:</p> <p>19 Q. The highlighted section uses the word 20 "diversion."</p> <p>21 What is your understanding of the term 22 "diversion," what does that mean?</p> <p>23 A. Diversion can -- basically it's illegal, 24 when you are talking about controlled substances, it</p>
<p style="text-align: center;">Page 39</p> <p>1 A. Yes.</p> <p>2 Q. And failure to comply with those laws or 3 rules would result in fines or license revocation.</p> <p>4 Is that accurate?</p> <p>5 A. I believe that that can be the -- the 6 result.</p> <p>7 Q. I'm going to show you another exhibit, 8 which is Exhibit 3.</p> <p>9 This exhibit is also from the DEA 10 Diversion Control website and it has a very brief 11 highlighted section at the top.</p> <p>12 I'd just ask you to read the highlighted 13 portion into the record and we can talk about it.</p> <p>14 A. Okay.</p> <p>15 Q. Can you read the highlighted portion into 16 the record, please?</p> <p>17 A. "All applicants and registrants shall 18 provide effective controls and procedures to guard 19 against theft and diversion of controlled substances."</p> <p>20 Q. Are you familiar with this language of 21 this section?</p> <p>22 A. I am.</p> <p>23 Q. And has H.D. Smith complied with this 24 requirement throughout its tenure as a pharmaceutical</p>	<p style="text-align: center;">Page 41</p> <p>1 is an illegal -- acts or any -- anything pertaining to 2 the controlled substances that would be illegal. It 3 could be theft, it could be abuse.</p> <p>4 Q. The section uses the -- the phrase "theft 5 and diversion." So separating out theft from 6 diversion, what's your understanding of diversion?</p> <p>7 A. The controlled substances going into 8 illicit channels, illegal use of controlled 9 substances.</p> <p>10 Q. You -- you used the phrase "illicit 11 channels." Can you be more specific what you mean by 12 that?</p> <p>13 A. It could be channels in the supply chain 14 that are -- you know, it could be counterfeit, it 15 could be, you know, criminal type, you know, sale -- 16 illegal sales, illegal sales of controlled substances, 17 illegal use of controlled substances.</p> <p>18 Q. Would diversion include obtaining 19 prescriptions through forged prescriptions?</p> <p>20 A. Yes.</p> <p>21 Q. Would diversion include -- I think you -- 22 you mentioned it, but just to clarify, would diversion 23 include the resale of legally-obtained prescription 24 controlled substances? So in other words --</p>

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<p style="text-align: center;">Page 42</p> <p>1 A. Obtained legally and then illegally sold?</p> <p>2 Q. Yes.</p> <p>3 A. On the street or what have you, yes.</p> <p>4 Q. Have there been occasions in which</p> <p>5 H.D. Smith has uncovered, using your definition of</p> <p>6 diversion, the diversion of controlled substances in</p> <p>7 its tenure as a registrant under the Controlled</p> <p>8 Substances Act?</p> <p>9 MR. PADGETT: Object; form.</p> <p>10 BY THE WITNESS:</p> <p>11 A. I can -- I can say that we may have</p> <p>12 suspected diversion. We don't do criminal</p> <p>13 investigations. We -- we may suspect diversion, we</p> <p>14 may report it. The end result may be down the line</p> <p>15 that there was illegal diversion, you know, a fact</p> <p>16 that someone, you know, was criminally prosecuted,</p> <p>17 but, you know, our responsibility is -- is -- is not</p> <p>18 to conduct criminal investigations. So I can't say</p> <p>19 for -- for a fact that, you know, what you asked.</p> <p>20 BY MR. YOUNG:</p> <p>21 Q. In your role as chief compliance officer,</p> <p>22 have you had occasion to investigate a pharmacy that</p> <p>23 you suspected was diverting controlled substances?</p> <p>24 A. When you say "investigate," what --</p>	<p style="text-align: center;">Page 44</p> <p>1 either cut off entirely or at least cut off the -- the</p> <p>2 purchase of controls.</p> <p>3 Q. And specifically with regard to what we</p> <p>4 will call CT-1 jurisdictions, which CT-1 jurisdictions</p> <p>5 include Cuyahoga County, the City of Cleveland, Summit</p> <p>6 County and the City of Akron, with regard to those</p> <p>7 four geographic communities, are you -- is H.D. Smith</p> <p>8 aware of suspected diversion taking place at</p> <p>9 pharmacies that it served as a distributor?</p> <p>10 MR. PADGETT: Object to form to the extent</p> <p>11 suggesting we are a defendant in Summit County or</p> <p>12 Akron.</p> <p>13 MR. YOUNG: Yeah, fair enough.</p> <p>14 BY MR. YOUNG:</p> <p>15 Q. So with regard to Cuyahoga and the City of</p> <p>16 Cleveland, has H.D. Smith ever identified pharmacies</p> <p>17 that it suspected were diverting controlled</p> <p>18 substances?</p> <p>19 A. No.</p> <p>20 Q. Have you undertaken investigations of</p> <p>21 pharmacies in Cuyahoga County or Cleveland and that</p> <p>22 you initially suspected were diverting controlled</p> <p>23 substances and concluded that they, in fact, were not</p> <p>24 diverting controlled substances?</p>
<p style="text-align: center;">Page 43</p> <p>1 what -- can you define that a little bit more?</p> <p>2 Q. Gather information or inquire.</p> <p>3 A. We would gather information, we would</p> <p>4 conduct our due diligence, and then if we would have a</p> <p>5 reason to believe that there may be diversion taking</p> <p>6 place, then that would -- that would be reported, but</p> <p>7 we wouldn't necessarily go any further in -- into any</p> <p>8 kind of criminal investigation because that's not</p> <p>9 our -- our place.</p> <p>10 Q. Okay. But there have been occasions in</p> <p>11 which H.D. Smith has concluded that diversion is</p> <p>12 likely at a pharmacy that it supplies?</p> <p>13 MR. PADGETT: Object to form.</p> <p>14 BY THE WITNESS:</p> <p>15 A. When we have reason to believe that there</p> <p>16 may be diversion taking place.</p> <p>17 BY MR. YOUNG:</p> <p>18 Q. Can you say -- and this is a difficult</p> <p>19 question, can you say approximately how many</p> <p>20 pharmacies that you identified as reason to believe</p> <p>21 that diversion was taking place?</p> <p>22 A. We've probably -- I'll take a wild guess,</p> <p>23 2- or 300 pharmacies, maybe more, that we have -- have</p> <p>24 reason to believe there may be diversion and we've</p>	<p style="text-align: center;">Page 45</p> <p>1 MR. PADGETT: Object to form.</p> <p>2 BY THE WITNESS:</p> <p>3 A. I'd probably like to get a little bit</p> <p>4 better idea of what you consider an investigation</p> <p>5 because -- or I can give you what our determinant --</p> <p>6 or what we believe any -- any of our due diligence we</p> <p>7 consider part of an investigation.</p> <p>8 In our due diligence we look at the</p> <p>9 totality of all circumstances. And we never suspected</p> <p>10 or had reason to believe that any pharmacies in</p> <p>11 Cuyahoga County or Cleveland were diverting.</p> <p>12 BY MR. YOUNG:</p> <p>13 Q. Fair enough.</p> <p>14 I'm going to show you now what's been</p> <p>15 premarked as Plaintiff's Exhibit -- or Euson</p> <p>16 Deposition Exhibit 4. This is another printout from</p> <p>17 the DEA Office of Diversion Control. It has a</p> <p>18 highlighted portion.</p> <p>19 I'm going to ask you to take a look at</p> <p>20 that and then read it into the record.</p> <p>21 A. Do you want me to state the code or any --</p> <p>22 and the part or anything?</p> <p>23 Q. Ah, sure. That would be great.</p> <p>24 A. Okay.</p>

12 (Pages 42 to 45)

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<p style="text-align: center;">Page 46</p> <p>1 Q. I failed to do so with the prior exhibit, 2 so that's probably a good idea.</p> <p>3 A. Title 21 Code of Federal Regulations, 4 Part 1301, Registration of Manufacturers, 5 Distributors, and Dispensers of Controlled Substances. 6 Security Requirements. This is 1301.74, 7 subsection (b).</p> <p>8 "The registrant shall design and operate a 9 system to disclose to the registrant suspicious orders 10 of controlled substances. The registrant shall inform 11 the Field Office of the Administration in his area of 12 suspicious orders when discovered by the registrant. 13 Suspicious orders include orders of unusual size, 14 orders deviating substantially from a normal pattern, 15 and orders of unusual frequency."</p> <p>16 Q. Are you familiar with the language in 17 1301.74(b)?</p> <p>18 A. Yes.</p> <p>19 Q. And what do you refer to or how -- how do 20 you refer to this language, this requirement?</p> <p>21 MR. PADGETT: Object to form.</p> <p>22 BY MR. YOUNG:</p> <p>23 Q. Within H.D. Smith, does it have a certain 24 nomenclature or is this just a known --</p>	<p style="text-align: center;">Page 48</p> <p>1 A. Not --</p> <p>2 Q. Okay.</p> <p>3 A. -- not particularly.</p> <p>4 Q. In your opinion, did H.D. Smith comply 5 with this requirement throughout your tenure with the 6 company?</p> <p>7 A. Yes, we did.</p> <p>8 Q. Did H.D. Smith always have in place 9 systems to identify suspicious orders as defined here 10 in subsection (b) which you just read?</p> <p>11 MR. PADGETT: Object to scope.</p> <p>12 BY THE WITNESS:</p> <p>13 A. We had a manual system and then we had an 14 automated system. We had several iterations of that.</p> <p>15 BY MR. YOUNG:</p> <p>16 Q. And we'll dig into the details of those 17 systems shortly, but is it your testimony today that 18 at all times H.D. Smith complied with this 19 requirement?</p> <p>20 A. Yes.</p> <p>21 Q. That includes during the manual system as 22 well as the automated system?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Who was responsible for ensuring that</p>
<p style="text-align: center;">Page 47</p> <p>1 A. What time period are you talking about?</p> <p>2 Q. Currently.</p> <p>3 A. Currently, we have -- if this is what you 4 are asking, we have an automate --</p> <p>5 MR. PADGETT: Same objection.</p> <p>6 Go ahead.</p> <p>7 BY THE WITNESS:</p> <p>8 A. We have an automated system called our 9 Controlled Substance Order Monitoring Program, CSOMP 10 for short.</p> <p>11 Is that what you were referring to?</p> <p>12 BY MR. YOUNG:</p> <p>13 Q. Not -- not exactly.</p> <p>14 A. Okay.</p> <p>15 Q. This is -- this is part of the Controlled 16 Substances Act requirements for registrants. And I 17 was just curious if you had some nomenclature or would 18 refer to this particular provision in a certain way?</p> <p>19 And specifically talking about the "suspicious orders 20 include orders of unusual size, deviating 21 substantially from a normal pattern, and orders of 22 unusual frequency," that requirement.</p> <p>23 You have no particular nomenclature you 24 use in the industry?</p>	<p style="text-align: center;">Page 49</p> <p>1 H.D. Smith complied with this provision, Section B?</p> <p>2 MR. PADGETT: Object to form.</p> <p>3 BY MR. YOUNG:</p> <p>4 Q. Is that -- is that your job?</p> <p>5 A. What time period?</p> <p>6 Q. Throughout your tenure, if there is 7 someone that was more senior than you and was 8 responsible for compliance with this provision, I'd 9 like to know them, but I'd also like to know whether 10 or not this was your job?</p> <p>11 A. When I first came to H.D. Smith in 12 November of 2005 until -- when I first came there, it 13 was the -- it was the responsibility of the individual 14 distribution center managers, the operations managers 15 to report suspicious orders to the field office in 16 their area. That continued on until spring of 2008 17 when we got our -- our automated system running, and 18 then that was brought in -- into the corporate office 19 and under my responsibility.</p> <p>20 Q. When you first got to H.D. Smith, was 21 H.D. Smith in compliance with this provision?</p> <p>22 A. I believe so.</p> <p>23 Q. When you first got to H.D. Smith, was 24 H.D. Smith reporting suspicious orders to the DEA when</p>

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<p style="text-align: right;">Page 50</p> <p>1 they were discovered?</p> <p>2 A. At that --</p> <p>3 MR. PADGETT: Object to form.</p> <p>4 BY THE WITNESS:</p> <p>5 A. At that -- at that time the -- the 6 industry standard and the expectation from DEA was 7 that orders were basically reported after the fact. 8 They were -- if -- if we discovered an order 9 beforehand, it would be reported before the sale.</p> <p>10 Other than that, the operations managers 11 reviewed orders at the end of each month and anything 12 that they thought was unusual they would send that to 13 the DEA. And that was the industry standard and the 14 expectation at that time, which has changed over time.</p> <p>15 BY MR. YOUNG:</p> <p>16 Q. And -- and we'll get into that a little 17 bit later, but with regard to the requirements as you 18 read them in -- in Section B, is it your testimony 19 that H.D. Smith was in or out of compliance with 20 specifically reporting suspicious orders when they 21 were discovered by the registrant?</p> <p>22 So not with the DEA, I think your 23 testimony was that the DEA allowed it to be done a 24 certain way, but -- but I want to know with specific</p>	<p style="text-align: right;">Page 52</p> <p>1 when you got there to H.D. Smith and the way that 2 things were done and the changes that were made.</p> <p>3 Did the senior management or board of 4 directors of H.D. Smith have involvement or input over 5 those changes?</p> <p>6 A. Not necessarily.</p> <p>7 Q. How were those changes implemented? In 8 other words, you get there and you noticed things were 9 being done in a certain way and you had 10 recommendations to change them.</p> <p>11 How is -- how are you able to implement 12 those changes?</p> <p>13 A. Shortly after I got there we had a meeting 14 with DEA and I had consistent contact with DEA and 15 headquarters. We -- any changes to the programs 16 and -- and how we did things as we went along were -- 17 there was never any interference from anyone, any 18 management at H.D. Smith.</p> <p>19 Q. So was there someone more senior than you 20 that made it clear that whatever George recommends for 21 compliance changes should be followed?</p> <p>22 A. I -- I don't know that it was that rigid. 23 They considered me as their compliance expert and they 24 let me put in the -- the processes in place to -- that</p>
<p style="text-align: right;">Page 51</p> <p>1 reference to this provision as it's written and as you 2 read, was H.D. Smith in compliance?</p> <p>3 MR. PADGETT: Object to form.</p> <p>4 BY THE WITNESS:</p> <p>5 A. Even if it was after the fact that our 6 operations manager reported it, that was reported when 7 discovered.</p> <p>8 BY MR. YOUNG:</p> <p>9 Q. Okay. So there were no delays between 10 when an order was discovered and when it was reported 11 to the DEA throughout the tenure of H.D. Smith as a 12 registrant?</p> <p>13 MR. PADGETT: Object to form.</p> <p>14 BY THE WITNESS:</p> <p>15 A. What time period are you talking?</p> <p>16 BY MR. YOUNG:</p> <p>17 Q. Throughout H.D. Smith's history, are you 18 aware of any instance in which H.D. Smith failed to 19 report a suspicious order when it was discovered?</p> <p>20 MR. PADGETT: Object to form.</p> <p>21 BY THE WITNESS:</p> <p>22 A. No.</p> <p>23 BY MR. YOUNG:</p> <p>24 Q. Okay. You mentioned a transition from</p>	<p style="text-align: right;">Page 53</p> <p>1 needed to be put in and improvements.</p> <p>2 Q. H.D. Smith acknowledges that Section B of 3 Part 1301 is a requirement that it's obligated to 4 comply with, is that correct?</p> <p>5 A. It's our responsibility to put -- comply 6 with the law.</p> <p>7 Q. And H.D. Smith acknowledges that as a 8 registrant or distributor of controlled substances it 9 must exercise due diligence to avoid filling 10 suspicious orders, is that accurate?</p> <p>11 A. Repeat that.</p> <p>12 Q. Does H.D. Smith acknowledge that it must 13 exercise due diligence to avoid filling suspicious 14 orders?</p> <p>15 MR. PADGETT: Object to form.</p> <p>16 BY THE WITNESS:</p> <p>17 A. It is our responsibility, you know, within 18 our -- our place in the supply chain to maintain 19 effective controls against diversion and report 20 suspicious orders when discovered as -- as to this 21 regulation.</p> <p>22 BY MR. YOUNG:</p> <p>23 Q. And must H.D. Smith exercise due diligence 24 in that regard?</p>

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<p>1 MR. PADGETT: Object to form.</p> <p>2 BY THE WITNESS:</p> <p>3 A. Can you clarify due diligence?</p> <p>4 BY MR. YOUNG:</p> <p>5 Q. Well, I'm -- I'm trying to understand 6 what's the basis of H.D. Smith's compliance with 7 these, with these laws, and you're the chief 8 compliance officer. So I want to understand from 9 H.D. Smith's perspective how should it comply with 10 these laws? Should it do it willy-nilly or should it 11 do it with due diligence?</p> <p>12 MR. PADGETT: Object to form.</p> <p>13 BY THE WITNESS:</p> <p>14 A. You know, part -- our -- our process and 15 our procedures, you know, include due diligence to 16 know our customers. You know, we put processes and 17 procedures in place to get -- to understand the 18 totality of circumstances and -- and the -- and to 19 know our customers, their needs, if that is -- if 20 that's what you are looking for.</p> <p>21 BY MR. YOUNG:</p> <p>22 Q. Yeah. No, that's -- that's fair.</p> <p>23 A. Okay.</p> <p>24 Q. In these three or four sections of</p>	<p>1 distributes controlled substances in this case, 2 specifically opioids, that result in diversion, that 3 the public could suffer harm?</p> <p>4 MR. PADGETT: Object to form.</p> <p>5 BY THE WITNESS:</p> <p>6 A. Again, our -- our responsibility within 7 the supply chain is -- is to maintain effective 8 controls against diversion. Diversion comes in many 9 forms and there is many forms of diversion that we 10 have no control over.</p> <p>11 BY MR. YOUNG:</p> <p>12 Q. Does H.D. Smith acknowledge that if they 13 distribute opioid orders deviating from a normal 14 pattern and fails to report those to the DEA, that 15 that would result in diversion?</p> <p>16 MR. PADGETT: Object to form.</p> <p>17 BY MR. YOUNG:</p> <p>18 Q. In other words, let me rephrase that, that 19 was an inartful question.</p> <p>20 There are three types of suspicious orders 21 that are defined or described in the section that you 22 just read, Section B, and they are orders of unusual 23 size, orders deviating substantially from a normal 24 pattern, and orders of unusual frequency, right? So</p>
<p style="text-align: center;">Page 55</p> <p>1 regulations and laws that -- that we've discussed, 2 Exhibits 1 through 4, what's the purpose of these, 3 these laws?</p> <p>4 Does H.D. Smith have an opinion as to the 5 purpose of the Controlled Substances Act and the 6 attendant regulations?</p> <p>7 MR. PADGETT: I'll object to form.</p> <p>8 BY THE WITNESS:</p> <p>9 A. You know, our responsibility is to comply 10 with the -- with the regulations.</p> <p>11 BY MR. YOUNG:</p> <p>12 Q. Well, why do these laws exist?</p> <p>13 MR. PADGETT: Same objection.</p> <p>14 BY THE WITNESS:</p> <p>15 A. I wasn't there when they put the laws 16 together.</p> <p>17 BY MR. YOUNG:</p> <p>18 Q. Does H.D. Smith have an opinion as to why 19 these laws exist?</p> <p>20 MR. PADGETT: Same objection.</p> <p>21 BY THE WITNESS:</p> <p>22 A. We comply with the regulations.</p> <p>23 BY MR. YOUNG:</p> <p>24 Q. Does H.D. Smith acknowledge that if it</p>	<p style="text-align: center;">Page 57</p> <p>1 we've got size, pattern and frequency.</p> <p>2 When there is a suspicious order that 3 deviates from a normal pattern, if H.D. Smith were to 4 fail to report that suspicious order to the DEA, would 5 that result in diversion?</p> <p>6 MR. PADGETT: Object to form.</p> <p>7 BY THE WITNESS:</p> <p>8 A. I don't believe you can say a blanket 9 statement like that.</p> <p>10 BY MR. YOUNG:</p> <p>11 Q. Is it possible?</p> <p>12 MR. PADGETT: Same objection.</p> <p>13 BY THE WITNESS:</p> <p>14 A. Diversion is possible throughout the in -- 15 throughout the supply chain.</p> <p>16 BY MR. YOUNG:</p> <p>17 Q. Is H.D. Smith aware of the great demand 18 for opioid products through illicit channels like you 19 described earlier?</p> <p>20 MR. PADGETT: Object to form.</p> <p>21 BY THE WITNESS:</p> <p>22 A. Can you be a little bit more specific?</p> <p>23 BY MR. YOUNG:</p> <p>24 Q. Is H.D. Smith aware that there is a demand</p>

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<p style="text-align: center;">Page 58</p> <p>1 on the street for opioids?</p> <p>2 A. Yeah, through our experience, yes, there</p> <p>3 is a -- there has been a demand for -- for opioids.</p> <p>4 Q. Is H.D. Smith aware that the country is</p> <p>5 currently undergoing an addiction, an opioid addiction</p> <p>6 epidemic?</p> <p>7 MR. PADGETT: Object to form.</p> <p>8 BY THE WITNESS:</p> <p>9 A. You know, we stay -- stay abreast of -- of</p> <p>10 issues and I know CDC has called it an epidemic. I</p> <p>11 don't know the exact definition of an epidemic.</p> <p>12 BY MR. YOUNG:</p> <p>13 Q. Does H.D. Smith have an opinion on the</p> <p>14 current state of opioid addiction in the</p> <p>15 United States?</p> <p>16 MR. PADGETT: Object to form.</p> <p>17 BY THE WITNESS:</p> <p>18 A. Can you rephrase that?</p> <p>19 BY MR. YOUNG:</p> <p>20 Q. Does H.D. Smith have an opinion on what's</p> <p>21 been described as the opioid epidemic? So I think</p> <p>22 you -- you didn't want to use the word "epidemic," so</p> <p>23 how would you define the current state of affairs with</p> <p>24 regard to opioid addiction in America?</p>	<p style="text-align: center;">Page 60</p> <p>1 are addictive are not dangerous in the wrong hands or</p> <p>2 are dangerous in the wrong hands?</p> <p>3 MR. PADGETT: Object to form.</p> <p>4 BY THE WITNESS:</p> <p>5 A. Again, clarify that, I -- I said that they</p> <p>6 can be addictive.</p> <p>7 BY MR. YOUNG:</p> <p>8 Q. Okay.</p> <p>9 A. Okay.</p> <p>10 And can you repeat your question again</p> <p>11 then?</p> <p>12 Q. Sure.</p> <p>13 These -- these drugs, these controlled</p> <p>14 substances, in this case opioids, if they were to</p> <p>15 reach the wrong hands, does their potential to be</p> <p>16 addictive, is that dangerous?</p> <p>17 MR. PADGETT: Object to form.</p> <p>18 BY THE WITNESS:</p> <p>19 A. I'm not really clear on what you are</p> <p>20 asking. I mean --</p> <p>21 BY MR. YOUNG:</p> <p>22 Q. Okay.</p> <p>23 A. -- what -- where -- you know, dangerous to</p> <p>24 the person, dangerous to society?</p>
<p style="text-align: center;">Page 59</p> <p>1 MR. PADGETT: Object to form.</p> <p>2 BY THE WITNESS:</p> <p>3 A. I didn't say I didn't want to use the word</p> <p>4 "epidemic." I said CDC has claimed it is an epidemic.</p> <p>5 And I don't know the exact definition of an epidemic.</p> <p>6 I think that's subjective. But I do know</p> <p>7 that there is -- there are issues with opioids, there</p> <p>8 is issues with illicit fentanyl, there is issues with</p> <p>9 heroin, so yes.</p> <p>10 BY MR. YOUNG:</p> <p>11 Q. Does H.D. Smith acknowledge that opioids</p> <p>12 are addictive?</p> <p>13 A. I believe they can be addictive.</p> <p>14 Q. Does H.D. Smith acknowledge that opioids</p> <p>15 are dangerous in the wrong hands?</p> <p>16 MR. PADGETT: Object to form.</p> <p>17 BY THE WITNESS:</p> <p>18 A. You'd have to define dangerous and be a</p> <p>19 little bit more specific on that.</p> <p>20 Q. Well, H.D. Smith --</p> <p>21 A. And what the wrong hands are.</p> <p>22 Q. H.D. Smith distributes opioids and we've</p> <p>23 agreed or you've admitted that opioids are addictive.</p> <p>24 Is it your testimony that opioids which</p>	<p style="text-align: center;">Page 61</p> <p>1 Q. No, that's fair.</p> <p>2 A. Yeah.</p> <p>3 Q. As I mentioned at the outset, I may ask</p> <p>4 many a question that -- that doesn't make sense to you</p> <p>5 and I appreciate you letting me know.</p> <p>6 Does H.D. Smith have an opinion as to</p> <p>7 whether or not pharmaceutical products, in this</p> <p>8 instance opioids, the type that it distributes, have</p> <p>9 caused harm in the State of Ohio?</p> <p>10 MR. PADGETT: Object to form.</p> <p>11 BY THE WITNESS:</p> <p>12 A. I -- I can't say for certain that the</p> <p>13 drugs that we have distributed have caused harm to</p> <p>14 anyone.</p> <p>15 BY MR. YOUNG:</p> <p>16 Q. And I should have been more clear.</p> <p>17 I don't mean specifically the drugs that</p> <p>18 you delivered but the types of drugs that you</p> <p>19 delivered, the controlled substance opioids have</p> <p>20 caused harm to the State of Ohio or in the State of</p> <p>21 Ohio?</p> <p>22 MR. PADGETT: Object to form, scope.</p> <p>23 BY THE WITNESS:</p> <p>24 A. I'm still not exactly sure where you are</p>

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<p style="text-align: center;">Page 62</p> <p>1 going with that, but, I mean, opioids, you know, can 2 be addictive, they can cause overdose deaths if -- if 3 used incorrectly, if that's what you are getting at. 4 BY MR. YOUNG: 5 Q. Well, I -- I want to understand 6 H.D. Smith, as a distributor of opioids, whether or 7 not it has an opinion as to whether or not opioids 8 have caused harm to, in this case, I'll even limit it 9 further, the City of Cleveland and Cuyahoga County. 10 Have the City of Cleveland or Cuyahoga 11 County residents and the government entities 12 themselves suffered harm as a result of prescription 13 opioids? 14 MR. PADGETT: Object to form. 15 BY THE WITNESS: 16 A. I'm still not clear exactly what harm you 17 are asking about. You know, these -- you know, these 18 drugs that -- that -- these opioid drugs that are 19 distributed, you know, are -- that are used by -- by 20 patients can be, you know, lifesaving, you know, drugs 21 can -- can relieve people of pain, which they are 22 intended to do, you know, for legitimate use and -- 23 and legitimate patients. 24 BY MR. YOUNG:</p>	<p style="text-align: center;">Page 64</p> <p>1 cause? 2 MR. PADGETT: Objection; scope. 3 BY THE WITNESS: 4 A. I don't know specifically. 5 BY MR. YOUNG: 6 Q. You haven't -- H.D. Smith hasn't done any 7 research to determine whether or not Cleveland or 8 Cuyahoga County has suffered harm as a result of 9 prescription opioids? 10 MR. PADGETT: Objection; scope. 11 BY THE WITNESS: 12 A. I'm -- I'm still not sure what you mean by 13 harm, but my assumption would be that there probably 14 have been people that have died of overload -- of 15 prescription drug overdoses in Cuyahoga County. 16 BY MR. YOUNG: 17 Q. Okay. I'm going to show you what's been 18 marked as Exhibit 5, and this I'll give you in just a 19 second, I'm sure that you are familiar with it, it has 20 been pre highlighted, it is on DEA letterhead and it 21 is dated September 27th, 2006. 22 Does that exhibit look familiar to you? 23 A. Yes, sir. 24 Q. This letter is from Joe Rannazzisi.</p>
<p style="text-align: center;">Page 63</p> <p>1 Q. Sure. And that wasn't my question. My 2 question is the opposite of that. 3 It's have those same drugs caused harm. 4 You've mentioned some of the benefits and I want to 5 know about some of the harmful effects. 6 So does H.D. Smith have an opinion as to 7 whether or not these prescription opioids that we are 8 talking about generally, not the ones that it 9 specifically distributed, but the type, whether or not 10 that has caused harm in Cleveland and Cuyahoga County? 11 MR. PADGETT: Object to form. 12 BY THE WITNESS: 13 A. I don't know the specifics you are talking 14 about, but can opioids be abused, can people die of 15 overdoses, yes, if that's the harm you are talking 16 about, my assumption is in Cuyahoga County people have 17 died of -- of drug overdoses. 18 BY MR. YOUNG: 19 Q. And do you know whether or not Cleveland 20 and Cuyahoga County drug overdoses have been the 21 result of prescription opioids or I think you 22 mentioned heroin and illicit fentanyl? Have you 23 researched or have you come to a conclusion as to 24 whether or not prescription opioids are part of that</p>	<p style="text-align: center;">Page 65</p> <p>1 Are you familiar with Mr. Rannazzisi? 2 A. Yes. 3 Q. Have you met him before? 4 A. I have. 5 Q. On how many occasions? 6 A. Maybe a couple. 7 Q. Did you receive this letter on behalf of 8 H.D. Smith in approximately September of 2006? 9 A. This was sent to our distribution center, 10 it would have been forwarded to me. 11 Q. So sometime thereafter you would have 12 received it? 13 A. Yes. 14 Q. Do you recall receiving this letter 15 specifically? 16 A. Not specifically. 17 Q. Can you read Paragraph 1 of that letter? 18 A. Not highlighted, the very first paragraph? 19 Q. Yeah. 20 A. Okay. 21 "This letter is being sent to every 22 commercial entity in the United States registered with 23 the Drug Enforcement Administration (DEA) to 24 distribute controlled substances. The purpose of this</p>

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<p style="text-align: center;">Page 66</p> <p>1 letter is to reiterate the responsibilities of 2 controlled substance distributors in view of the 3 prescription drug abuse problem our nation currently 4 faces."</p> <p>5 Q. Mr. Rannazzisi references a prescription 6 drug abuse problem the nation currently faces in 7 September of 2006.</p> <p>8 Did H.D. Smith have reason to disagree 9 that a prescription drug abuse problem existed in 10 2006?</p> <p>11 A. No.</p> <p>12 Q. Do you know what Mr. Rannazzisi was 13 referring to when he described the prescription drug 14 abuse problem the nation currently faces?</p> <p>15 MR. PADGETT: Object to form.</p> <p>16 BY THE WITNESS:</p> <p>17 A. I am assuming that it is controlled 18 substances since it's from -- since he is from DEA.</p> <p>19 BY MR. YOUNG:</p> <p>20 Q. So you were the compliance officer of 21 H.D. Smith, a licensed drug distributor, you've 22 received this letter in 2006, and your testimony today 23 is you're not sure what the prescription drug abuse 24 problem the nation faced was?</p>	<p style="text-align: center;">Page 68</p> <p>1 or not have an opinion as to the accuracy of that 2 statement?</p> <p>3 MR. PADGETT: Object to form.</p> <p>4 BY MR. YOUNG:</p> <p>5 Q. That a distributor has a statutory 6 responsibility to exercise due diligence to avoid 7 filling suspicious orders that might be diverted into 8 other than legitimate medical, scientific and 9 industrial channels?</p> <p>10 MR. PADGETT: Same objections.</p> <p>11 BY THE WITNESS:</p> <p>12 A. We do exercise our due diligence.</p> <p>13 BY MR. YOUNG:</p> <p>14 Q. So H.D. Smith agrees that it has a 15 statutory responsibility?</p> <p>16 MR. PADGETT: Same objection.</p> <p>17 BY THE WITNESS:</p> <p>18 A. I'm not sure about the statutory 19 responsibility, but we do, as a practice, exercise our 20 due diligence.</p> <p>21 BY MR. YOUNG:</p> <p>22 Q. So what part of the statutory 23 responsibility does H.D. Smith disagree with?</p> <p>24 MR. PADGETT: Same objection.</p>
<p style="text-align: center;">Page 67</p> <p>1 MR. PADGETT: Object to form.</p> <p>2 BY MR. YOUNG:</p> <p>3 Q. You are un -- are you unclear?</p> <p>4 A. I didn't say that. I said that the -- it 5 is a prescription drug abuse problem. Prescription 6 drug abuse can be anything. But I'm assuming it's -- 7 what -- what he is referencing is controlled substance 8 abuse.</p> <p>9 Q. Yeah, fair enough. The -- and the letter 10 does go on to -- to state that.</p> <p>11 Can you turn to Page 2, there is a 12 highlighted portion. And I want to circle back to 13 some of your earlier testimony where you talked about 14 the DEA and sort of their understanding of 15 interpretations of the laws and whatnot. And we'll 16 get to that in a second, but first, can you read for 17 us the highlighted portions of Page 2?</p> <p>18 A. "Thus, in addition to reporting all 19 suspicious orders, a distributor has a statutory 20 responsibility to exercise due diligence to avoid 21 filling sup" -- "suspicious orders that might be 22 diverted into other than legitimate medical, 23 scientific, and industrial channels."</p> <p>24 Q. Okay. So does H.D. Smith agree, disagree,</p>	<p style="text-align: center;">Page 69</p> <p>1 BY THE WITNESS:</p> <p>2 A. I'm saying I'm not sure of a statutory 3 responsibility, but we -- of -- to exercise due 4 diligence, but we do, as a practice, exercise due 5 diligence.</p> <p>6 BY MR. YOUNG:</p> <p>7 Q. So you disagree that there is a statutory 8 responsibility to exercise due diligence when filling 9 suspicious orders?</p> <p>10 MR. PADGETT: Object to form.</p> <p>11 BY THE WITNESS:</p> <p>12 A. I don't disagree. I'm saying that we do 13 exercise our due diligence.</p> <p>14 BY MR. YOUNG:</p> <p>15 Q. That wasn't my question.</p> <p>16 My question is whether or not you agree or 17 disagree that there is a statutory responsibility to 18 do so?</p> <p>19 MR. PADGETT: Object to form, asked and 20 answered.</p> <p>21 BY MR. YOUNG:</p> <p>22 Q. You can answer.</p> <p>23 A. Oh, okay.</p> <p>24 What I'm saying is I'm not clear about</p>

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<p style="text-align: center;">Page 70</p> <p>1 when they say a statutory responsibility for due 2 diligence. We -- 3 BY MR. YOUNG: 4 Q. So you are the chief compliance officer of 5 H.D. Smith, I think your testimony has been that you 6 are the senior-most person charged with compliance 7 responsibility for H.D. Smith, and as we sit here 8 today, you are not sure whether or not there is a 9 statutory responsibility to exercise due diligence?</p> <p>10 A. We exercise due diligence and our 11 responsibility is to maintain effective controls 12 against diversion, which we do, and we abide by the 13 regulations.</p> <p>14 Q. Okay. And I -- I guess we are in a bit of 15 a echo chamber.</p> <p>16 What I need to understand is whether or 17 not H.D. Smith is of the opinion that there is a 18 statutory responsibility to do those things? Because 19 I'm still not getting a clear answer from you as to 20 whether or not it is statutory in nature. So I'll ask 21 it as clearly and cleanly as possible.</p> <p>22 Is there a statutory responsibility, a 23 legal obligation to exercise due diligence to avoid 24 filling suspicious orders?</p>	<p style="text-align: center;">Page 72</p> <p>1 the statutory verbiage is regarding due diligence. 2 BY MR. YOUNG: 3 Q. Okay. That's fair enough. 4 The next paragraph that's highlighted 5 there, can you read that for us?</p> <p>6 A. "In a similar vein" -- "in a similar vein, 7 given the requirement under Section 823(e) that a 8 distributor maintain effective controls against 9 diversion, a distributor may not simply rely on the 10 fact that the person placing the suspicious order is a 11 DEA registrant and turn a blind eye to the suspicious 12 circumstances. Again, to maintain effective controls 13 against diversion as Section 823(e) requires, the 14 distributor should exercise due care in confirming the 15 legitimacy of all orders prior to filling."</p> <p>16 Q. Is there anything in that section that 17 H.D. Smith disagrees with?</p> <p>18 A. No.</p> <p>19 Q. There is another section in here -- where 20 is -- can we come back to Page 1 of this document, and 21 under Background, the second full paragraph, it begins 22 with: "The CSA was designed."</p> <p>23 A. "The CSA was designed" -- do you want me 24 to read it?</p>
<p style="text-align: center;">Page 71</p> <p>1 MR. PADGETT: Object to form. 2 BY THE WITNESS: 3 A. I -- I don't -- I don't -- the statutory 4 responsibility I'm not sure of. We do exercise due 5 diligence. That's what we do as a practice, a 6 process, a procedure when -- regarding suspicious 7 orders.</p> <p>8 BY MR. YOUNG: 9 Q. Why -- why do you do that? If there is 10 not a statutory responsibility, why would you do that?</p> <p>11 MR. PADGETT: Object to form. 12 BY THE WITNESS: 13 A. As part of our effort to maintain controls 14 against diversion.</p> <p>15 BY MR. YOUNG: 16 Q. Which is based in law or you just decide 17 to do that on your own?</p> <p>18 A. No. It's our responsibility to comply 19 with the -- with the law and the regulations.</p> <p>20 Q. So there is law and regulations that 21 require the exercise of due diligence?</p> <p>22 MR. PADGETT: Same objection. 23 BY THE WITNESS: 24 A. What I'm telling you is I'm not sure what</p>	<p style="text-align: center;">Page 73</p> <p>1 Q. Yes, can you read it, please. Sorry. 2 A. "The CSA was designed by Congress to 3 combat diversion by providing for a closed system of 4 drug distribution, in which all legitimate handlers of 5 controlled substances must obtain a DEA registration 6 and, as a condition of maintaining such registration, 7 must take reasonable steps to ensure that their 8 registration is not being utilized as a source of 9 diversion. Distributors are, of course, one of the 10 key components in the distribution chain. If the 11 closed system is to function properly as Congress 12 envisioned, distributors must be vigilant in deciding 13 whether a prospective customer can be trusted to 14 deliver controlled substances only for lawful 15 purposes. This responsibility is critical, as 16 Congress has expressly declared that the illegal 17 distribution of controlled substances has a 18 substantial and detrimental effect on the health and 19 general welfare of the American people."</p> <p>20 Q. So, and I appreciate you reading that. It 21 was lengthy, I know, and -- and there is a lot there, 22 but what I want to know is whether or not there is 23 anything in that paragraph that H.D. Smith disagrees 24 with?</p>

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<p style="text-align: right;">Page 74</p> <p>1 MR. PADGETT: I'll object to form. 2 BY THE WITNESS: 3 A. I'm rereading it. 4 BY MR. YOUNG: 5 Q. Yeah, and if you want, we can do it -- we 6 can do it sentence by sentence. 7 So the first sentence is -- 8 A. Can I -- can I reread it first? 9 Q. Sure. 10 A. Thanks. 11 Okay. 12 Q. Okay. So, just after you read it a second 13 time, is there any part of that that H.D. Smith 14 disagrees with? 15 MR. PADGETT: Object to form. 16 BY MR. YOUNG: 17 Q. We can go sentence by sentence if you'd 18 like? 19 A. It's not necessarily disagree, just, you 20 know, some of the -- you know, when Congress 21 envisioned, you know, I -- I don't know what was going 22 through Congress's mind back then. 23 Q. Okay. Yeah, fair enough. 24 Do you have an understanding or belief as</p>	<p style="text-align: right;">Page 76</p> <p>1 as H.D. Smith are registered with the DEA. 2 Anyone then that we would sell to, whether 3 it be a hospital, pharmacy, doctor, has to be a -- a 4 registered -- registered with DEA also to handle 5 controlled substances. 6 So we can only sell to DEA registrants, 7 and that's all recorded. So it -- it keeps the system 8 so that there is no introduction of other products, 9 there is no -- if -- if -- you know, if there is 10 theft, that would be discovered. And then on down to 11 where we would sell to, again, a DEA registrant. 12 You've got a DE -- DEA registered 13 practitioner that would be writing prescriptions 14 filled at a DEA pharmacy -- or DEA registered pharmacy 15 on until that it is dispensed to a patient, and all of 16 that -- all -- all of that is tracked through the 17 system in a -- what's considered a closed system. 18 Q. Perfect. Thank you. 19 I want to turn back to Page 2 of this 20 document. It's -- Paragraph 2 says -- it -- it begins 21 with "DEA recognizes," and -- and I'm just going to 22 read it briefly to -- to get you acquainted with it. 23 It's the third sentence. 24 "Nonetheless, given the extent of</p>
<p style="text-align: right;">Page 75</p> <p>1 to what, other than described in this letter, what 2 Congress may have envisioned distributors doing under 3 the Controlled Substances Act? 4 In other words, do you have some 5 disagreement with the conclusion here or are you just 6 unaware? 7 A. I don't have any specific disagreement. 8 Q. The letter describes the distribution 9 chain as a closed system. 10 Are you familiar with that phrase? 11 A. Yes. 12 Q. Can you explain to us what the closed 13 system means? 14 A. Basically it's a -- closed system is 15 from -- you know, DEA sets quotas for manufacturers of 16 controlled substances on what they can manufacture. 17 The manufacturer then, if -- if you go -- simplify the 18 supply chain, sells product to distributors, all of 19 that's recorded so that -- so that there is no 20 diversion or theft inside that supply chain from 21 manufacturer/distributor. 22 Same way, and you have to be registered 23 with the DEA to handle controlled substances, the 24 manufacturers are registered, the DEA distributor such</p>	<p style="text-align: right;">Page 77</p> <p>1 prescription drug abuse in the United States." 2 Can you -- can you read that for us? 3 A. "Nonetheless, given the extent of 4 prescription drug abuse in the United States, along 5 with the dangerous and potentially lethal 6 consequences" -- "consequences of such abuse, even 7 just one distributor that uses its DEA registration to 8 facilitate diversion can cause enormous harm." 9 Q. Does H.D. Smith agree or disagree with 10 that statement? 11 MR. PADGETT: Object to form. 12 BY THE WITNESS: 13 A. Based on circumstances, it could. 14 BY MR. YOUNG: 15 Q. Is it your testimony that one distributor 16 that uses its DEA registration to facilitate diversion 17 can cause enormous harm? 18 A. Yes. 19 Q. The sentence also talks about the extent 20 of prescription drug abuse in the United States. I 21 know we've kind of talked about this a little bit, but 22 does H.D. Smith have reason to dispute that at least 23 in 2006 there was a prescription drug abuse problem in 24 the United States?</p>

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<p style="text-align: right;">Page 78</p> <p>1 A. I don't dispute that.</p> <p>2 Q. There is another section in here I want to 3 draw your attention to, and, again, this is a letter 4 that all distributors received from Joe Rannazzisi and 5 you previously testified that you received this.</p> <p>6 The third-to-last paragraph -- oh, no. 7 You already read that. I'm sorry.</p> <p>8 The -- the third-to-last paragraph which 9 is highlighted on your sheet that you previously read, 10 I think I've asked this, but does H.D. Smith 11 acknowledge that there are additional responsibilities 12 of distributors beyond just reporting suspicious 13 orders?</p> <p>14 A. You are referring to where it says: 15 "Thus, in addition"?</p> <p>16 Q. Yes.</p> <p>17 A. Okay.</p> <p>18 MR. PADGETT: Object to form.</p> <p>19 BY MR. YOUNG:</p> <p>20 Q. So, and -- and -- and I'll break it down, 21 this section of the letter actually describes the 22 reporting requirement as well as the duty to exercise 23 due diligence to avoid filling the order.</p> <p>24 Does H.D. Smith recognize and acknowledge</p>	<p style="text-align: right;">Page 80</p> <p>1 BY THE WITNESS:</p> <p>2 A. The regulation states that you must report 3 suspicious orders. There is -- there is not a 4 shipping regulation.</p> <p>5 BY MR. YOUNG:</p> <p>6 Q. Okay. So, and I don't want to testify for 7 you, I just want to make sure that I get some clarity 8 from you on this.</p> <p>9 It is your testimony that there is no 10 obligation of a drug distributor to halt a suspicious 11 order?</p> <p>12 MR. PADGETT: Object to form.</p> <p>13 BY THE WITNESS:</p> <p>14 A. By regulation there is not. By practice 15 and procedure and process, H.D. Smith does not ship 16 any orders that we have identified as suspicious.</p> <p>17 BY MR. YOUNG:</p> <p>18 Q. Has it ever done so in the past?</p> <p>19 A. Which time period?</p> <p>20 Q. To your knowledge as a representative of 21 H.D. Smith, has H.D. Smith ever shipped an order that 22 it identified as suspicious?</p> <p>23 A. Prior to our automated system when we were 24 on a manual system, as was industry practice, there</p>
<p style="text-align: right;">Page 79</p> <p>1 that that is a requirement under the rules, 2 regulations and laws which govern drug distribution?</p> <p>3 MR. PADGETT: Object to form.</p> <p>4 BY THE WITNESS:</p> <p>5 A. The regulation is -- as written is a 6 regulatory responsibility to report suspicious orders.</p> <p>7 BY MR. YOUNG:</p> <p>8 Q. Okay. So does H.D. Smith disagree that 9 there is also a responsibility to avoid filling 10 suspicious orders?</p> <p>11 MR. PADGETT: Object to form.</p> <p>12 BY THE WITNESS:</p> <p>13 A. My understanding is that the regulation 14 refers to reporting suspicious orders. We, as a 15 practice, would not fill a suspicious order.</p> <p>16 BY MR. YOUNG:</p> <p>17 Q. So as the chief compliance officer of 18 H.D. Smith, it is your testimony today that H.D. Smith 19 could, if they so chose, fill a suspicious order?</p> <p>20 MR. PADGETT: Object to form.</p> <p>21 BY MR. YOUNG:</p> <p>22 Q. And not violate the Controlled Substances 23 Act?</p> <p>24 MR. PADGETT: Same objection.</p>	<p style="text-align: right;">Page 81</p> <p>1 may have been orders that were reported after the fact 2 that had already been shipped.</p> <p>3 Q. And what happens to those orders? So once 4 they are sent to a pharmacy and they are later 5 identified as suspicious, what, if anything, does 6 H.D. Smith do about that?</p> <p>7 MR. PADGETT: Object to form.</p> <p>8 BY THE WITNESS:</p> <p>9 A. At that time -- in that time period?</p> <p>10 BY MR. YOUNG:</p> <p>11 Q. At any time period.</p> <p>12 MR. PADGETT: Object to form.</p> <p>13 BY THE WITNESS:</p> <p>14 A. It has changed throughout the years.</p> <p>15 BY MR. YOUNG:</p> <p>16 Q. So let's begin with your initial or first 17 understanding of the way things were at H.D. Smith.</p> <p>18 If H.D. Smith were to ship an order that 19 was subsequently identified as suspicious, what is 20 your first understanding of what they did with that 21 order afterwards or -- or with that pharmacy/customer 22 afterwards?</p> <p>23 MR. PADGETT: Object to form.</p> <p>24 BY THE WITNESS:</p>

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<p style="text-align: center;">Page 82</p> <p>1 A. You know, our responsibility was to report 2 suspicious orders and by industry practice and -- and 3 at the time and what was expected by DEA, we were 4 complying with what -- what was expected and what was 5 industry practice, which was report the suspicious 6 order and it would have been after the fact at that 7 time prior to the spring of 2008.</p> <p>8 BY MR. YOUNG:</p> <p>9 Q. Okay. And what I want to know is did 10 H.D. Smith take any action, and they may not have, I 11 don't know, did they take any action once they 12 recognized that a suspicious order went out the door?</p> <p>13 MR. PADGETT: Object to form.</p> <p>14 BY THE WITNESS:</p> <p>15 A. I'm not sure prior to me coming there.</p> <p>16 BY MR. YOUNG:</p> <p>17 Q. How about under your tenure?</p> <p>18 A. We did investigate those when they were 19 brought to my attention.</p> <p>20 Q. Is there any ability to retract an order 21 from a pharmacy that was shipped?</p> <p>22 A. Not to my knowledge.</p> <p>23 Q. Did you ever make an attempt to contact a 24 pharmacy and explain that you mistakenly shipped an</p>	<p style="text-align: center;">Page 84</p> <p>1 letter, did you do anything with it or did you just 2 read it and file it away?</p> <p>3 A. We were already addressing the concerns 4 that were in this -- when this letter came. So it's 5 not like it just got filed away. We were already, you 6 know, taking this to our people, to our salespeople at 7 all of our divisions, to our operations people to 8 inform them of things to look for, the things that 9 are -- that are listed on -- on Page 3. We -- we 10 started to put together a -- we started to explore an 11 automated system that we could use to better adhere to 12 our responsibilities.</p> <p>13 Q. And we'll get into the automated system 14 and whatnot, but I want to know, you know, practically 15 speaking, when you received this letter, I know it was 16 forwarded to you because it wasn't addressed to the -- 17 to you at your -- at your office, after you received 18 this specific letter, what you did with it? So not 19 the information in it, but the letter itself, did you 20 forward it to anyone?</p> <p>21 A. I could have.</p> <p>22 Q. You don't recall?</p> <p>23 A. (Nodding head).</p> <p>24 Q. Do you know whether or not senior</p>
<p style="text-align: center;">Page 83</p> <p>1 order in excess of what they were entitled to receive?</p> <p>2 A. At that time, again, we need to talk about 3 time periods, at that time there was no limit or 4 whatever.</p> <p>5 Q. Going back to this letter, this Rannazzisi 6 letter from September of 2006, what, if anything, did 7 you do with this letter? Did you distribute it, did 8 you condense it to a memo, did you share it with 9 anyone? What did you do with it?</p> <p>10 A. Prior to this letter coming out, the -- 11 again, I had had a -- this came out in September 2006. 12 I had a meeting with DEA in January of 2006 that 13 discussed much of the information that was in here. 14 This letter is pretty much pertaining to internet-type 15 pharmacies, the same way as the -- the meeting I had 16 with DEA.</p> <p>17 So we had already acted upon that. We 18 had -- I had developed a presentation. I actually 19 used much of the -- the presentation that DEA had 20 provided me and provided that to our -- our 21 distribution centers, our sales reps, our operations 22 people to better inform them of what to look for 23 regarding internet-type pharmacies.</p> <p>24 Q. But specifically with regard to this</p>	<p style="text-align: center;">Page 85</p> <p>1 management, so management at a -- at a status or 2 hierarchy above yours received a copy of this letter?</p> <p>3 A. These letters were -- were shipped to DEA 4 registrants which would have been our -- our 5 warehouses. Our corporate office is not a 6 registered -- a registrant with DEA. They would not 7 have received this. I can't tell you for sure. My 8 assumption is I would have forwarded it to upper 9 management. I can't tell you for sure.</p> <p>10 Q. Do you recall any specific conversations 11 that you had with senior management about the contents 12 of this letter?</p> <p>13 And I don't mean your prior meeting with 14 DEA, you mentioned that January meeting, but 15 specifically this letter?</p> <p>16 A. No. I don't recall.</p> <p>17 Q. Do you recall whether or not this letter 18 was distilled or condensed in any form for sharing 19 with other people in the compliance department?</p> <p>20 MR. PADGETT: Object to -- object to form.</p> <p>21 BY THE WITNESS:</p> <p>22 A. I don't know what you mean by that 23 question.</p> <p>24 BY MR. YOUNG:</p>

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<p style="text-align: right;">Page 86</p> <p>1 Q. Were there other people in the compliance 2 department at the time you received this letter?</p> <p>3 A. I think one.</p> <p>4 Q. Who was that?</p> <p>5 A. P.J. VanDermeersch, P.J. Little at the 6 time.</p> <p>7 Q. Do you know whether P.J. received a copy 8 of this letter either from you or from some other 9 source?</p> <p>10 A. I'm sure she did.</p> <p>11 Q. Do you recall discussing the contents of 12 this letter with P.J.?</p> <p>13 A. I don't.</p> <p>14 Q. Okay.</p> <p>15 MR. YOUNG: Now is probably a good time to take 16 a break. I think we've been going a little bit. I 17 don't know if you need to use the restroom, but we'll 18 go off the record.</p> <p>19 THE VIDEOGRAPHER: We are off the record at 20 10:44 a.m.</p> <p>21 (WHEREUPON, a recess was had 22 from 10:44 to 10:55 a.m.)</p> <p>23 THE VIDEOGRAPHER: We are back on the record at 24 10:55 a.m.</p>	<p style="text-align: right;">Page 88</p> <p>1 Q. The other thing I'd ask is: Do you recall 2 what you did with this letter after you received it? 3 Just like we discussed with the prior letter, did this 4 letter receive the same treatment or different 5 treatment as the prior Rannazzisi letter?</p> <p>6 A. I don't recall exactly what I did with it.</p> <p>7 Q. There is a highlighted portion of this 8 letter. It begins in Paragraph 3, if I could ask you 9 to read that into the record, please.</p> <p>10 A. Do you want just the highlighted part?</p> <p>11 Q. Yes.</p> <p>12 A. "Filing a" -- "Filing a monthly report of 13 completed transactions (such as, excessive purchase 14 report or high unit purchases) does not meet the 15 regulatory requirement to report suspicious orders."</p> <p>16 Q. Okay. Does H.D. Smith agree or disagree 17 with that statement?</p> <p>18 MR. PADGETT: Object to form.</p> <p>19 BY THE WITNESS:</p> <p>20 A. You know, this was part of the 21 ever-changing guidance and interpretation by DEA and 22 this was -- I do agree with it, and this was right at 23 the time when we were putting together our automated 24 suspicious order monitoring program, our Controlled</p>
<p style="text-align: right;">Page 87</p> <p>1 BY MR. YOUNG:</p> <p>2 Q. Mr. Euson, we -- we just took a break and 3 I -- I know that you had a chance to communicate with 4 your counsel. I don't want to know any of the content 5 of what you may have discussed with them, but is there 6 anything that you learned or were instructed that 7 might change your testimony from the prior session 8 that we just had?</p> <p>9 A. No.</p> <p>10 Q. So when we just left, we were looking at 11 the Rannazzisi -- what I call Rannazzisi 1, the first 12 letter. And I want to show you what I call 13 Rannazzisi 2, which is another letter from 14 Mr. Rannazzisi. This one is dated December 27th, 15 2007 -- 2007, and I'd just ask you to take a look at 16 that.</p> <p>17 Just like with regard to the first letter, 18 I'll ask: Do you recall receiving a copy of this 19 letter?</p> <p>20 A. Yes.</p> <p>21 Q. Is it your recollection that you received 22 it around the time that it was dated in December 23 of 2007?</p> <p>24 A. I would assume.</p>	<p style="text-align: right;">Page 89</p> <p>1 Substance Order Monitoring Program, so...</p> <p>2 BY MR. YOUNG:</p> <p>3 Q. Did the laws or regulations change over 4 time or the -- the changes that you are talking about 5 are interpretations of the law?</p> <p>6 MR. PADGETT: Object to form.</p> <p>7 BY THE WITNESS:</p> <p>8 A. The laws them -- the laws themselves, the 9 regulation?</p> <p>10 BY MR. YOUNG:</p> <p>11 Q. Yes.</p> <p>12 A. The verbiage did not change. The 13 interpretation and the -- of -- of how that regulation 14 was complied with did change over time.</p> <p>15 Q. And what did H.D. Smith rely upon to 16 change the way it interpreted those laws? In other 17 words, did you receive something in writing from the 18 DEA which said: This is how you should conduct your 19 program?</p> <p>20 A. There was a series of events that happened 21 and especially in 2007, we -- there was an industry 22 conference in September that year in which a DEA 23 representative gave a presentation on expectations of 24 compliance with the regulation.</p>

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<p style="text-align: center;">Page 90</p> <p>1 At that meeting I was invited to come up 2 to DEA headquarters in October of 2007 to discuss 3 H.D. Smith developing an automated system and we met 4 with DEA headquarters in October of that year and we 5 began -- we -- we had started to develop an automated 6 system but it wasn't -- we could never get it to work 7 right. 8 We revamped it after that meeting and -- 9 and after -- during that presentation and in 10 September, DEA and a -- a person with A -- 11 AmerisourceBergen put on a -- a joint discussion on 12 order monitoring, and so we tried to fashion our order 13 monitoring system to make it similar to 14 AmerisourceBergen's and I had constant contact with 15 DEA headquarters, Kyle Wright with the DEA, as we were 16 developing it. 17 So I'm not sure exactly if this was your 18 question, but this is where I'm going with it, so, you 19 know, by -- from October to -- to April or March we 20 were developing our system to -- to role out our 21 automated system to better comply with the new 22 interpretation or -- of -- of the regulation. 23 Q. And is it your position today that 24 H.D. Smith was not obligated to comply with the letter</p>	<p style="text-align: center;">Page 92</p> <p>1 was industry standard, and we were in compliance with 2 what we believed was DEA's expectation of complying 3 with that regulation. 4 BY MR. YOUNG: 5 Q. Okay. But that was not technically in 6 compliance with the law as it was written, is that 7 true? 8 MR. PADGETT: Object to form. 9 BY THE WITNESS: 10 A. We believe we were in compliance with the 11 regulation. 12 BY MR. YOUNG: 13 Q. And what was the basis for that belief? 14 Did the DEA send you a letter blessing or sanctioning 15 your program? 16 A. DEA will not do that. 17 Q. Did you rely upon the advice of outside 18 counsel to lead you to conclude that your system was 19 in compliance with the law? 20 MR. PADGETT: Ob- -- object to form. 21 I'll instruct you not to answer any 22 attorney/client communications. 23 MR. YOUNG: On the development of CSOMP? 24 MR. PADGETT: Excuse me?</p>
<p style="text-align: center;">Page 91</p> <p>1 of the law prior to the rollout of the automated 2 system because of direction -- directives from the 3 DEA? 4 MR. PADGETT: Object to form. 5 BY THE WITNESS: 6 A. Our obligation was to comply with the 7 regulation, and based on industry standard and the 8 interpretation and with working with DEA at the time 9 before our automated system, we believed we were 10 complying with the regulation of reporting orders when 11 discovered. 12 BY MR. YOUNG: 13 Q. So the -- prior to the implementation of 14 your automated system, and that's under the manual 15 system that -- that you described earlier, the manual 16 system did not meet the requirements that are 17 enunciated in the Rannazzisi '07 letter, did they? 18 A. We reported suspicious -- 19 MR. PADGETT: Object to form. 20 Go ahead. 21 BY THE WITNESS: 22 A. We reported orders that we -- that our 23 operations managers deemed as potentially suspicious 24 to DEA after the fact, after they had been shipped, as</p>	<p style="text-align: center;">Page 93</p> <p>1 MR. YOUNG: On the development of the suspicious 2 order monitoring system? 3 MR. PADGETT: That wasn't your question. 4 BY MR. YOUNG: 5 Q. Did your system -- the automated system 6 that you developed, were you under the impression that 7 the automated system, which we'll talk about shortly, 8 that that was in compliance with the letter of the law 9 of the Controlled Substances Act? 10 MR. PADGETT: Object to form. 11 BY THE WITNESS: 12 A. Regarding the section on -- on reporting 13 suspicious orders? 14 BY MR. YOUNG: 15 Q. On any and every section of the Controlled 16 Substances Act, was your automated system in 17 compliance with that? 18 MR. PADGETT: Object to form. 19 BY THE WITNESS: 20 A. We believed it was. 21 BY MR. YOUNG: 22 Q. Now, you -- you seemed to hesitate that 23 you believed that it was. Is it -- is it 100 percent 24 that it was in compliance or are you unclear as to</p>

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<p style="text-align: right;">Page 94</p> <p>1 whether or not it was in compliance?</p> <p>2 MR. PADGETT: Object to form.</p> <p>3 BY THE WITNESS:</p> <p>4 A. I'm not unclear. My -- we believed that</p> <p>5 we were in compliance. We developed that automated</p> <p>6 system to somewhat mirror AmerisourceBergen's system</p> <p>7 that -- DEA won't bless or -- or say that any</p> <p>8 system -- there is -- there is no definition of a</p> <p>9 system that is authorized or -- or blessed by DEA.</p> <p>10 You know, I knew that DEA was involved with the</p> <p>11 development of AmerisourceBergen's. And then when we</p> <p>12 met with DEA at headquarters in October of 2007, I was</p> <p>13 in constant communication with DEA headquarters, Kyle</p> <p>14 Wright specifically at DEA headquarters, letting him</p> <p>15 know all along the way how we were developing that</p> <p>16 system. Would he give a blessing on it and say</p> <p>17 that's -- that's exactly what they want? No, they</p> <p>18 won't do that. So our belief, my belief is that we</p> <p>19 were in compliance with the regulation.</p> <p>20 BY MR. YOUNG:</p> <p>21 Q. Did anyone give you an opinion, a</p> <p>22 regulatory opinion, a -- a government opinion about</p> <p>23 whether or not your system was in compliance with the</p> <p>24 CSA entirely?</p>	<p style="text-align: right;">Page 96</p> <p>1 BY THE WITNESS:</p> <p>2 A. The requirement is to report suspicious</p> <p>3 orders and the requirement is for us to maintain</p> <p>4 effective controls against diversion.</p> <p>5 BY MR. YOUNG:</p> <p>6 Q. Okay. That's not my question.</p> <p>7 My question is: This sentence that is in</p> <p>8 the Rannazzisi letter to all registrants, does</p> <p>9 H.D. Smith agree that this is a requirement or does it</p> <p>10 disagree that that's a requirement?</p> <p>11 MR. PADGETT: Same objection.</p> <p>12 BY MR. YOUNG:</p> <p>13 Q. And I would focus your attention on the</p> <p>14 temporal aspect, the "prior to completing a sale"</p> <p>15 provision.</p> <p>16 MR. PADGETT: Object to form.</p> <p>17 BY THE WITNESS:</p> <p>18 A. I -- I think that -- can you reword that</p> <p>19 question, because I --</p> <p>20 BY MR. YOUNG:</p> <p>21 Q. Sure.</p> <p>22 A. This -- you know, there is also, you know,</p> <p>23 analysis of suspicious orders prior to completion of</p> <p>24 sales. You -- I need a little bit more context and a</p>
<p style="text-align: right;">Page 95</p> <p>1 A. No, but we also -- numerous cyclical</p> <p>2 inspections by DEA at all of our distribution centers</p> <p>3 and there was never anything brought up that our</p> <p>4 system was out of compliance.</p> <p>5 Q. There is another highlighted section in</p> <p>6 this letter. It's a -- just a part of a sentence I'd</p> <p>7 just like you to read. It says -- it begins with:</p> <p>8 "Registrants must conduct."</p> <p>9 Can you read that into the record?</p> <p>10 A. Just the highlighted part --</p> <p>11 Q. No, the whole sentence.</p> <p>12 A. -- out of context?</p> <p>13 Q. That sentence.</p> <p>14 A. Pardon me?</p> <p>15 Q. That sentence: "Registrants must</p> <p>16 conduct."</p> <p>17 A. "Registrants must conduct an independent</p> <p>18 analysis of suspicious orders prior to completing a</p> <p>19 sale to determine whether the controlled substances</p> <p>20 are likely to be diverted from legitimate channels."</p> <p>21 Q. Okay. So do you agree or disagree that</p> <p>22 that is a requirement under the Controlled Substances</p> <p>23 Act?</p> <p>24 MR. PADGETT: Object to form.</p>	<p style="text-align: right;">Page 97</p> <p>1 little bit more definition of exactly what you are</p> <p>2 looking for.</p> <p>3 Q. So, as the chief compliance officer of</p> <p>4 H.D. Smith, as the corporate designee of H.D. Smith,</p> <p>5 what I would like to know is whether or not H.D. Smith</p> <p>6 views that sentence as a regulatory requirement that</p> <p>7 it is currently and historically complying with or</p> <p>8 not? If it is -- if you disagree with it, that's</p> <p>9 fine, but I want to know whether or not you have been</p> <p>10 and are in compliance with that requirement,</p> <p>11 conducting an independent analysis of suspicious</p> <p>12 orders prior to completing a sale?</p> <p>13 A. You --</p> <p>14 MR. PADGETT: Object to -- object to -- object</p> <p>15 to form and scope.</p> <p>16 BY THE WITNESS:</p> <p>17 A. This -- this letter is not law and it is</p> <p>18 not regulation. We comply with the regulation</p> <p>19 regarding reporting suspicious orders and we comply</p> <p>20 with the regulation of maintaining effective controls</p> <p>21 against diversion.</p> <p>22 BY MR. YOUNG:</p> <p>23 Q. And -- and -- and I appreciate your</p> <p>24 testimony that this letter is not the law. I just</p>

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<p>1 want to know whether or not you disagree with the 2 statement.</p> <p>3 Do you disagree that registrants must 4 conduct an independent analysis of suspicious orders 5 prior to completing a sale?</p> <p>6 MR. PADGETT: Object to form.</p> <p>7 BY THE WITNESS:</p> <p>8 A. I -- I don't know what else to tell you, 9 we -- we comply with the law as written and we 10 consider these guidance documents.</p> <p>11 BY MR. YOUNG:</p> <p>12 Q. Okay. So is this a guidance document that 13 H.D. Smith relies upon in interpreting and executing 14 its responsibilities under the Controlled Substances 15 Act?</p> <p>16 A. We do analyze orders and if we discover a 17 suspicious order we report it and we also do 18 independent investigation on those orders.</p> <p>19 Q. Okay. So H.D. Smith then conducts an 20 independent analysis of suspicious orders prior to 21 completing sales?</p> <p>22 A. What time period?</p> <p>23 Q. Let's start in 2008. Did it -- did it do 24 that in 2008?</p>	<p>1 monthly report of completed transactions, or was it 2 something different?</p> <p>3 A. Yeah, we are -- our operations managers at 4 the time prior to our automated system would go 5 through monthly reports at the end of the month and if 6 they deemed that there was a pos -- a potential 7 suspicious order, they would report that to DEA. It 8 was after the fact. And then this letter was a 9 guidance letter saying that we are not doing that 10 anymore, now we are doing it before the sale.</p> <p>11 Q. And -- and that's real -- really what I 12 wanted to know is whether or not this letter was the 13 initial indication to H.D. Smith that what it was 14 doing was not sufficient.</p> <p>15 Is this the first instance when H.D. Smith 16 learned of that?</p> <p>17 A. I wouldn't class -- I wouldn't say that it 18 was insufficient. That was the industry standard and 19 that was the expectation at the time. When I had the 20 discussion with DEA, with our industry -- the industry 21 meeting in September 2007, it was brought to people's 22 attention at that conference, which is for 23 distributors.</p> <p>24 My individual meeting with DEA in October</p>
<p style="text-align: center;">Page 99</p> <p>1 A. Once we had our automated system up, yes, 2 it was prior to the sale.</p> <p>3 Q. Okay. So prior to the implementation of 4 the automated system, it did not do this, H.D. Smith 5 did not do an independent analysis of suspicious 6 orders prior to completing sales.</p> <p>7 Is that your testimony?</p> <p>8 MR. PADGETT: Object to form.</p> <p>9 BY THE WITNESS:</p> <p>10 A. With our -- with our manual system, there 11 were times when orders were discovered prior to sale 12 that were considered suspicious and reported and there 13 were times it was after the sale at the end of the 14 month when our operations managers went through prior 15 sales and reported them as potential suspicious 16 orders, but they were shipped out, it was after the 17 fact.</p> <p>18 BY MR. YOUNG:</p> <p>19 Q. So this letter, the part which you 20 initially read, filing a monthly report of completed 21 transactions does not meet the regulatory requirement 22 to report suspicious orders, is that a -- an accurate 23 depiction of what H.D. Smith did prior to 24 implementation of its automated system, the filing a</p>	<p style="text-align: center;">Page 101</p> <p>1 of 2007, they also brought it up before this letter, 2 and that's when we started working diligently on our 3 automated system so that we could comply with the new 4 interpretation and expectation of DEA.</p> <p>5 Q. Okay. So what was the first instance -- I 6 think you mentioned three different points in time 7 there.</p> <p>8 What was the first instance in which 9 H.D. Smith became aware that filing monthly reports 10 after the fact does not meet the regulatory 11 requirements?</p> <p>12 MR. PADGETT: Object to the form.</p> <p>13 BY MR. YOUNG:</p> <p>14 Q. It might have been a phone call, it may 15 have been an e-mail, it may have been a letter.</p> <p>16 A. It was sometime at the end of 2007.</p> <p>17 Q. Do you recall what it was, was it a 18 letter?</p> <p>19 A. I -- I don't specifically recall. It 20 was -- you know, we talked about it at our meeting 21 that we had in October and that's when we were going 22 to develop our system. That's not something you can 23 develop overnight, and DEA was well aware of that and 24 knew that it would be springtime before we were able</p>

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<p>1 to get our automated system up and running to comply 2 with the expectations, their expectations and the 3 expectations of this letter, because that was not the 4 industry standard and the expectation up to this 5 point.</p> <p>6 Q. The Rannazzisi letter also references on 7 Page 2, I believe -- I think it is Page 2, yes. On 8 the last paragraph it mentions a case. And it says: 9 "I refer you to the recent final order 10 issued by the Deputy Administrator, DEA, in the matter 11 of Southwood Pharmaceuticals," and it gives a -- a 12 case citation.</p> <p>13 Did you ever review the final order issued 14 by the DEA in the Southwood Pharmaceuticals case?</p> <p>15 A. Yes.</p> <p>16 Q. What did you conclude after reviewing that 17 final order?</p> <p>18 A. It has been a while since I read 19 Southwood, but my recollection is that it had to do 20 mainly with they were supplying internet pharmacies 21 with a lot of hydrocodone, if I recall correctly, and 22 they were not reporting those orders to DEA, and 23 consistently sold them even after they had been warned 24 by DEA. That's my general recollection of it, so...</p>	<p>1 Q. Did you have concerns about being in 2 violation of the CSA after reading the Southwood case? 3 A. Not that I believe, no.</p> <p>4 Q. Was H.D. Smith of the belief that once it 5 implemented its automated system that it would be in 6 compliance with the DEA's expectations and 7 interpretations of the CSA?</p> <p>8 A. Yes.</p> <p>9 Q. So prior to implementation of that, for 10 the time period between when you first learned that 11 you were not sufficiently complying with the letter of 12 the law until you implemented the automated system, 13 for that period of time isn't it true that you were in 14 violation of the CSA?</p> <p>15 MR. PADGETT: Object to form.</p> <p>16 BY THE WITNESS: 17 A. I don't believe so.</p> <p>18 BY MR. YOUNG: 19 Q. Why not?</p> <p>20 A. The DEA knew what we were doing, we had 21 done some beta testing, we were trying to look at 22 orders, we were reporting some when discovered, even 23 though they may have been after the fact, but, you 24 know, until we had our automated system up and</p>
<p style="text-align: center;">Page 103</p> <p>1 Q. Did -- did you only review the Southwood 2 Pharmaceuticals final order because of this Rannazzisi 3 letter or were you otherwise aware of it?</p> <p>4 A. I don't know exactly when I was aware of 5 this. I think this final ruling, it looks like it was 6 in 2007, so I don't know when that came out.</p> <p>7 Q. Did you do anything with the Southwood 8 Pharmaceuticals final order that you reviewed, did you 9 share it with anyone at H.D. Smith?</p> <p>10 A. I don't know if I exactly -- I -- I don't 11 recall if I shared the actual ruling, but it was -- it 12 was discussed at -- in compliance meetings and such 13 that we would have had with -- with the divisions. We 14 did annual compliance trainings with our sales reps 15 and our divisions. And I know it was part of -- part 16 of a PowerPoint that I would have had that -- that -- 17 and I would have explained the gist of the Southwood 18 ruling, that they had their registration revoked due 19 to internet sales.</p> <p>20 Q. Did they -- did H.D. Smith senior 21 management express any concerns to you about being in 22 violation of the CSA after learning about the 23 Southwood Pharmaceuticals final order?</p> <p>24 A. No.</p>	<p style="text-align: center;">Page 105</p> <p>1 running, you know, and we -- we did not have the 2 ability to do that as far as the prior to sale.</p> <p>3 Q. So am I to understand that H.D. Smith's 4 inability to comply with the law somehow made it okay?</p> <p>5 A. That's not what I'm saying.</p> <p>6 Q. Okay.</p> <p>7 A. I'm saying that we --</p> <p>8 MR. PADGETT: I'll object to form.</p> <p>9 Go ahead.</p> <p>10 BY THE WITNESS: 11 A. We believed that we were in compliance 12 with the law and the expectation from DEA in the way 13 we were operating and we were never told anything 14 differently. We had numerous dealings with DEA, we 15 had numerous inspections by DEA, and nothing was 16 brought up that we were in violation of -- of the -- 17 of this regulation.</p> <p>18 There were many pharmacies that we had 19 reported that we do our due diligence where we can 20 stop selling controlled substances to them and still 21 nothing was ever mentioned that we were in violation 22 of the regulation. And we did not believe that we 23 were.</p> <p>24 BY MR. YOUNG:</p>

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<p style="text-align: center;">Page 106</p> <p>1 Q. I'm going to show you what's been marked 2 as Euson Deposition Exhibit 7. This is a DEA report 3 of investigation of July 13th, 2006. It is of a 4 Paragould Pharmacy, Semo Drugs of Kennett, SafeScript 5 Pharmacy and Max Care Pharmacy. 6 Does that report look familiar to you? 7 Have you seen that before? 8 A. I have never seen it. 9 Q. Is this the type of report that you would 10 receive a copy of? 11 A. It looks like an internal DEA report. We 12 would not -- I have never seen this, nor have I seen a 13 report similar to this. 14 Q. This -- this report references -- where is 15 this name -- you have never seen this exhibit before. 16 So have you ever seen this type of report 17 before? 18 A. I have not. 19 Q. Do you know who Scott Garriott is? 20 A. Yes. 21 Q. How do you know Scott Garriott? 22 A. He is a diversion investigator that -- out 23 of the Springfield field office, Springfield, 24 Illinois.</p>	<p style="text-align: center;">Page 108</p> <p>1 DEA is referring to. 2 A. Okay. 3 4 5 6 7 8 9 10 11 12 13 14 15 16 reporting of suspicious orders to the DEA at the -- at 17 the time that this report was received by the DEA? 18 A. Our operation managers would report to the 19 field office in -- in their area, so in -- in this 20 case it's -- it's our Springfield, Illinois 21 distribution center. So our operations manager would 22 have reported to Scott Garriott who is the diversion 23 investigator in the field office. So looking at this 24 report, I -- I -- I don't know what to tell you about</p>
<p style="text-align: center;">Page 107</p> <p>1 2 3 4 5 6 7 8 9 10 Q. Okay. I'm going to show you an 11 investigative -- you've probably never seen any of 12 these reports, but I'm going to show you the next one 13 which is a similar report. That is Exhibit 8. And it 14 is also involving the same entities. 15 In this report it suggests on it that 16 H.D. Smith submitted a suspicious order analysis 17 report for the month of April 2006.</p>	<p style="text-align: center;">Page 109</p> <p>1 it. I mean -- 2 Q. You have no -- no recollection about this? 3 A. No. 4 Q. Okay. 5 A. You know, as time went on, we had our 6 operations managers send us reports any time they had 7 contact with regulatory agencies, whether it was 8 sending us a suspicious order or not. I don't know if 9 10 11 Q. But earlier you referred to a manual 12 system and then the automated system. 13 This would have been during the manual 14 system at H.D. Smith? 15 A. Yes, sir. 16 Q. And at some point in time H.D. Smith 17 changed its reporting of suspicious orders from the 18 operations managers that you just described, is that 19 right? 20 A. Yes. 21 22 23 24</p>

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<p style="text-align: center;">Page 110</p> <p>1 [REDACTED]</p> <p>2</p> <p>3 Q. And were you always reporting to the same</p> <p>4 person at the DEA or was it -- was it a different</p> <p>5 person each time or how did that work?</p> <p>6 A. We were under instructions -- the CFR, the</p> <p>7 regulation says to report to the field office where</p> <p>8 the -- your distribution center is located. We were</p> <p>9 under instructions by DEA headquarters after we had</p> <p>10 gone up there in October of 2007 to report directly to</p> <p>11 headquarters. And there were -- there was -- there</p> <p>12 were several different people that we would have</p> <p>13 reported to, basic -- you know, based on who was in</p> <p>14 what position at the time, whoever we were told to</p> <p>15 send it to, but it was to DEA headquarters for a time.</p> <p>16 Q. And how were these submitted, were these</p> <p>17 faxed, mailed, e-mailed?</p> <p>18 A. E-mail.</p> <p>19 Q. Was there a time when you were faxing</p> <p>20 suspicious orders to the DEA?</p> <p>21 A. I'm an -- I -- I don't know.</p> <p>22 Q. Okay.</p> <p>23 A. I'm assuming that before -- before -- in</p> <p>24 2008 when we had our automated system it was e-mail.</p>	<p style="text-align: center;">Page 112</p> <p>1 on the exhibit's date.</p> <p>2 You may answer.</p> <p>3 BY THE WITNESS:</p> <p>4 A. Well, Danny Avila was in Florida, so --</p> <p>5 and I think that's Agent Barnes -- or so it would be a</p> <p>6 Diversion Investigator Barnes, and I -- if it's the</p> <p>7 same person, I know her, but I -- I don't -- without a</p> <p>8 first name, I know Barnes is kind of a common name,</p> <p>9 so...</p> <p>10 BY MR. YOUNG:</p> <p>11 Q. Okay. Danny Avila in the -- in the e-mail</p> <p>12 says in his last sentence:</p> <p>13 "These orders would not be caught by the</p> <p>14 suspicious order utility since they were keyed</p> <p>15 in-house (is my understanding)."</p> <p>16 Do you understand what Danny is referring</p> <p>17 to there? I understand this is before your tenure,</p> <p>18 but I just want to know whether you are familiar?</p> <p>19 MR. PADGETT: Let the record reflect a</p> <p>20 continuing objection based on scope, date of the</p> <p>21 exhibit.</p> <p>22 BY THE WITNESS:</p> <p>23 A. I do not know what that is.</p> <p>24 BY MR. YOUNG:</p>
<p style="text-align: center;">Page 111</p> <p>1 I don't know how they were submitted by the divisions</p> <p>2 prior to that.</p> <p>3 Q. Was there a protocol under the manual -- a</p> <p>4 policy, a procedure or protocol under the manual</p> <p>5 system which required internal copies of those reports</p> <p>6 to anyone else? I know you mentioned you didn't</p> <p>7 receive them, but did anyone else receive them?</p> <p>8 A. Not that I'm aware of.</p> <p>9 Q. Okay. I'm going to show you a one-page,</p> <p>10 Exhibit 14, so skipping over quite a few since -- just</p> <p>11 take a look at that.</p> <p>12 Have you seen this e-mail before?</p> <p>13 A. This would have been before my time at</p> <p>14 H.D. Smith, so I have not seen this before.</p> <p>15 Q. Okay. I didn't know if -- if maybe your</p> <p>16 counsel had provided it to you or if you've seen it</p> <p>17 just in the course of business.</p> <p>18 Okay. Do you recognize the -- the</p> <p>19 original sender of this e-mail, Danny Avila, Avila?</p> <p>20 A. Yes.</p> <p>21 Q. Do you recognize an Agent Barnes, it says:</p> <p>22 "We called Agent Barnes from our local DEA office."</p> <p>23 Do you know who that is?</p> <p>24 MR. PADGETT: I'm going to object to scope based</p>	<p style="text-align: center;">Page 113</p> <p>1 Q. Okay.</p> <p>2 The phrase "suspicious order utility,"</p> <p>3 does that mean anything to H.D. Smith? Does that have</p> <p>4 a particular meaning?</p> <p>5 A. I -- I don't know what that is. I have</p> <p>6 never heard that term.</p> <p>7 Q. Okay.</p> <p>8 The top part of the e-mail which is the --</p> <p>9 I know the -- the headings are, I guess, cut off, this</p> <p>10 is just how it was produced to us, but it is from an</p> <p>11 Angelo Grande.</p> <p>12 Do you know Angelo Grande?</p> <p>13 A. Yes.</p> <p>14 Q. Who is Angelo Grande?</p> <p>15 A. Currently he is in charge of our Valley</p> <p>16 Wholesale division in Stockton, California. Prior to</p> <p>17 that he was vice president division manager of our</p> <p>18 Carson, California division, which before that was in</p> <p>19 Inglewood. And it was a -- an acquisition. So he</p> <p>20 came from an acquisition. I believe it was Barnes</p> <p>21 Wholesale that was acquired before my time.</p> <p>22 Q. Okay. The second sentence of Angelo's</p> <p>23 response to Danny is:</p> <p>24 "You are correct. It's my understanding</p>

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<p style="text-align: center;">Page 114</p> <p>1 also that all keyed items are excluded from the 2 reporting utility and those items are reviewed 3 manually with a report that is generated from the 4 AS400, showing control drugs sales history by item, 5 date, and by customer."</p> <p>6 Do you know what he is referring to there 7 by the AS400?</p> <p>8 A. Let me read this through real quick.</p> <p>9 Q. Sure.</p> <p>10 A. I -- I don't know what he is talking 11 about. I mean, I know what the AS400, that was our 12 sys -- that was our, I don't know what you call it, 13 our system, computer system, software companywide at 14 the time.</p> <p>15 Q. Who would be the --</p> <p>16 A. I can't -- I can only speculate what it 17 is. I don't know what it is.</p> <p>18 Q. Okay. Who would be the person who would 19 have the most knowledge about the AS400's suspicious 20 order utility?</p> <p>21 MR. PADGETT: Object to form.</p> <p>22 BY THE WITNESS:</p> <p>23 A. I would have no idea. I don't think -- we 24 haven't used AS400 since 2013, and I doubt there is</p>	<p style="text-align: center;">Page 116</p> <p>1 role in the compliance function of H.D. Smith at the 2 time of this e-mail?</p> <p>3 A. I don't know what his function was at this 4 time.</p> <p>5 Q. Do you know whether or not Dale Smith, 6 Junior ever authored any compliance-related policies 7 or procedures for H.D. Smith?</p> <p>8 A. I believe there is one policy regarding 9 orders.</p> <p>10 Q. That was authored by Dale Smith, Junior?</p> <p>11 A. Yes.</p> <p>12 Q. Do you know whether Chris Smith had any 13 role or involvement in authoring any policies or 14 procedures relating to compliance functions?</p> <p>15 A. Not that I'm aware of.</p> <p>16 Q. If we were to try to seek through your 17 information technology the either report or data 18 attendant to the report that's referenced here, who 19 would we be best to talk to about that? And you may 20 not know. I just --</p> <p>21 A. I -- I can only speculate. Rob Kash- --</p> <p>22 MR. PADGETT: Let me reiterate my continued 23 objection.</p> <p>24 BY THE WITNESS:</p>
<p style="text-align: center;">Page 115</p> <p>1 anyone at H.D. Smith around anymore that would have 2 any expertise in it.</p> <p>3 BY MR. YOUNG:</p> <p>4 Q. Who was in charge of compliance at the 5 time of this e-mail?</p> <p>6 A. Each -- each division was in charge of 7 their own compliance.</p> <p>8 Q. There was no central compliance function 9 in headquarters?</p> <p>10 A. Not that I'm aware of. I was first.</p> <p>11 Q. Did -- I noticed that Dale Smith and Chris 12 Smith are both copied on Danny's original e-mail.</p> <p>13 Why would they -- I'm sorry. They are not 14 copied, they are actually direct addressees.</p> <p>15 Who on -- why would they be included in a 16 compliance e-mail like this?</p> <p>17 A. I have no idea.</p> <p>18 MR. PADGETT: Object to form.</p> <p>19 BY MR. YOUNG:</p> <p>20 Q. Did Dale Smith, Junior have any -- I 21 assume this is Dale Smith, Junior in this e-mail, is 22 that your opinion?</p> <p>23 A. It would be my opinion.</p> <p>24 Q. Yeah. Did Dale Smith, Junior have any</p>	<p style="text-align: center;">Page 117</p> <p>1 A. Rob Kashmer was the head of our IT at one 2 time. I don't know if at this time.</p> <p>3 BY MR. YOUNG:</p> <p>4 Q. Okay.</p> <p>5 The last sentence, and, again, I realize 6 this is before your -- your tenure with the company, 7 but the last sentence of Angelo's response is, and 8 I'll -- and I'll read it:</p> <p>9 "It's my understanding that this 10 monitoring requirement is all a matter of alerting and 11 assisting the DEA with abusers even though they are 12 already getting some of that data on a regular basis 13 through ARCOS."</p> <p>14 What's the -- what is the reference to 15 ARCOS there, what does that mean?</p> <p>16 A. We report ARCOS data to DEA on a -- a 17 monthly basis through all of our distribution centers. 18 It is all of our C-IIIs and C-III narcotic products 19 that are either purchased -- you know, either we 20 receive in or we distribute out. It is part of the 21 closed loop system.</p> <p>22 Q. And the date of this e-mail is 23 October 5th, 2005.</p> <p>24 Have there been any changes since the date</p>

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<p>1 of this e-mail with regard to the way H.D. Smith 2 reports to the DEA on the ARCOS system?</p> <p>3 A. We -- we have central reporting now 4 through my office, through the corporate office.</p> <p>5 Q. Was that part of the automated system that 6 you've earlier described or is that something 7 different?</p> <p>8 A. No. It's -- it's separate.</p> <p>9 Q. Okay.</p> <p>10 I will now show you Plaintiff's Exhibit 15 11 with three highlighted sections on it. Take your 12 time. I think that this is the -- the policy that you 13 just referenced which was authored by Dale Smith, 14 Junior, but I want to -- want to hear from you, so 15 take a minute to familiarize yourself with it.</p> <p>16 A. This was the one I was referencing.</p> <p>17 Q. Okay. Was this the policy for controlled 18 substance monitoring that was in place at the time you 19 joined H.D. Smith?</p> <p>20 A. Yes.</p> <p>21 Q. I understand that this was written before 22 you got there, but have you since getting there 23 learned when this policy was authored? I think 24 it's -- it's not dated.</p>	<p>1 Exhibit 15 describes an operations manager as the 2 controlled substances coordinator.</p> <p>3 When did that definition or assignment to 4 the operations manager end, do you know the particular 5 date?</p> <p>6 A. It would have been when we rolled out 7 our -- our automated system which was rolled out 8 throughout the spring of 2008 to our various 9 distribution centers.</p> <p>10 Q. This policy references what I would call 11 paraphrasing of the regulations, and I'd just -- I'd 12 like you to read that first paragraph that's 13 highlighted there, "The monthly review"?</p> <p>14 A. Read it?</p> <p>15 Q. Yes.</p> <p>16 A. "The monthly review will consist of 17 comparing previous orders to determine frequency of 18 ordering, size of orders on specific products and 19 deviation from typical purchasing patterns. 20 Evaluations will be made from these reports to 21 determine if account should be brought to DEA's 22 attention."</p> <p>23 Q. So this was the policy that was in place 24 at the time you began at H.D. Smith, right?</p>
<p style="text-align: center;">Page 119</p> <p>1 A. I have no idea.</p> <p>2 Q. Do you know how long it was in place when 3 you got there?</p> <p>4 A. I do not.</p> <p>5 Q. When you were hired at H.D. Smith, was 6 part of your responsibility to take ownership over the 7 policies and procedures relating to controlled 8 substance monitoring?</p> <p>9 A. When I was first hired?</p> <p>10 Q. Yes.</p> <p>11 A. No.</p> <p>12 Q. So when you were first hired with 13 H.D. Smith, you had no responsibility relating to 14 controlled substance monitoring policies and 15 procedures?</p> <p>16 A. It was -- it was an evolution.</p> <p>17 Q. Am I to understand your -- your initial 18 focus was on security more than controlled substance 19 monitoring?</p> <p>20 A. Originally my title was director of 21 security. It morphed into director of security and 22 compliance. By it was more of, yeah, security-related 23 audits of facilities.</p> <p>24 Q. The policy that's contained within</p>	<p style="text-align: center;">Page 121</p> <p>1 A. Yes.</p> <p>2 Q. Is H.D. Smith of the opinion that this 3 policy complied or failed to comply with the 4 Controlled Substances Act as of 2005?</p> <p>5 A. Ask me that question again.</p> <p>6 Q. Did -- did the -- this policy, the 7 controlled substance monitoring policy, did this meet 8 the requirements of the CSA or did it fail to meet 9 those requirements?</p> <p>10 A. We be --</p> <p>11 MR. PADGETT: Object to form.</p> <p>12 BY THE WITNESS:</p> <p>13 A. We believe that it did.</p> <p>14 BY MR. YOUNG:</p> <p>15 Q. And I just want to reference back to your 16 earlier testimony.</p> <p>17 Do you mean to say that you believe that 18 it met the requirements as interpreted by the DEA or 19 under the letter of the law?</p> <p>20 MR. PADGETT: Object form.</p> <p>21 BY THE WITNESS:</p> <p>22 A. Both. We were reporting orders when they 23 were discovered. At this point it was discovered 24 during the monthly reviews.</p>

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<p style="text-align: center;">Page 122</p> <p>1 BY MR. YOUNG:</p> <p>2 Q. What's a -- a picker? This policy</p> <p>3 references experienced pickers.</p> <p>4 What's the -- I don't know if that's a</p> <p>5 term of art, or what H.D. Smith...?</p> <p>6 A. In a -- in a warehouse environment, it is</p> <p>7 the actual people that go to get the product for the</p> <p>8 order.</p> <p>9 So in a -- in a work -- in a</p> <p>10 pharmaceutical warehouse, Schedule II products are</p> <p>11 kept in a vault, III through Vs are kept in a -- in a</p> <p>12 DEA-mandated cage. Only certain people have authority</p> <p>13 to go in those vaults and cages. We put our most</p> <p>14 experienced people in there to reduce errors and so we</p> <p>15 have consistency of people looking at orders that</p> <p>16 could possibly identify something that may be out of</p> <p>17 the ordinary.</p> <p>18 And so the picker actually has -- in the</p> <p>19 old days it was paper, these days it is all</p> <p>20 electronic, but basically it's just picking the</p> <p>21 orders, you know.</p> <p>22 [REDACTED]</p> <p>23</p> <p>24</p>	<p style="text-align: center;">Page 124</p> <p>1 A. We had orders that -- that pickers had</p> <p>2 identified as potentially suspicious that were</p> <p>3 reported and then the monthly reviews by the</p> <p>4 operations managers that were, again, familiar with</p> <p>5 the customers and, you know, we -- you know, and then</p> <p>6 they would -- if they saw something that -- that they</p> <p>7 thought may be suspicious, they would report it to</p> <p>8 DEA.</p> <p>9 BY MR. YOUNG:</p> <p>10 Q. If the DEA never had meetings in D.C. and</p> <p>11 Rannazzisi never sent those two letters, would</p> <p>12 H.D. Smith have continued this type of policy for</p> <p>13 controlled substance monitoring?</p> <p>14 A. I can't speculate on that.</p> <p>15 MR. PADGETT: Object to form.</p> <p>16 BY MR. YOUNG:</p> <p>17 Q. I just want to make sure I understand</p> <p>18 whether or not the DEA is what triggered the change in</p> <p>19 the evolution of your system or was it self awareness,</p> <p>20 self observation?</p> <p>21 A. There is -- there is no regulation that</p> <p>22 says you have to have an automated system or a manual</p> <p>23 system. There is still people today, there is</p> <p>24 warehouses out there, there's people that have manual</p>
<p style="text-align: center;">Page 123</p> <p>1 MR. PADGETT: Object to form.</p> <p>2 BY THE WITNESS:</p> <p>3 [REDACTED]</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13 Q. And if they didn't make that observation,</p> <p>14 if they -- if they failed to bring a otherwise</p> <p>15 suspicious order to the attention of the manager, is</p> <p>16 there some other mechanism in place at the time, this</p> <p>17 is going back to '05, that would have caught</p> <p>18 suspicious orders or unusual orders other than the</p> <p>19 pickers?</p> <p>20 A. Not to my knowledge.</p> <p>21 Q. Do you know how effective this policy was</p> <p>22 at H.D. Smith in identifying suspicious orders?</p> <p>23 MR. PADGETT: Object to form.</p> <p>24 BY THE WITNESS:</p>	<p style="text-align: center;">Page 125</p> <p>1 systems in place.</p> <p>2 As evolution of -- of -- over time, you</p> <p>3 know, when we had our first meeting, you know, I</p> <p>4 started in November of 2005, had a meeting with DEA in</p> <p>5 January of 2006, we started to explore a -- an</p> <p>6 automated system so that we could constantly, you</p> <p>7 know, try to improve our processes to maintain</p> <p>8 effective controls against diversion. You know, the</p> <p>9 whole industry has evolved.</p> <p>10 Q. This policy was in place until what, what</p> <p>11 time period?</p> <p>12 A. I don't know that it was -- it would have</p> <p>13 been when we put a policy out in 2008 for order</p> <p>14 monitoring.</p> <p>15 Q. Okay. And prior to the implementation of</p> <p>16 the 2008 policy, who -- who at H.D. Smith was</p> <p>17 responsible for monitoring controlled substances?</p> <p>18 So this policy references operations</p> <p>19 managers and pickers. Was there an -- an -- was there</p> <p>20 anyone else that was involved in that process?</p> <p>21 A. I -- I -- I can't -- I can't -- I can't</p> <p>22 say. I mean, the operations manager was the</p> <p>23 controlled substance coordinator. He was the one that</p> <p>24 was in charge of the warehouse, everything that went</p>

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<p style="text-align: center;">Page 126</p> <p>1 on in the warehouse, so he would have been, you know, 2 the main person.</p> <p>3 Q. Was there an internal auditing function 4 that tested compliance with these policies and 5 procedures?</p> <p>6 A. Not that I'm aware of.</p> <p>7 Q. When you came onboard, and I understand 8 there is an evolution of your responsibilities, was 9 there a point in time in which you tested or called 10 into question the efficacy of this policy?</p> <p>11 A. I don't know if it was to call into 12 question. We were just con -- we were just always 13 trying to him prove our processes and our procedures.</p> <p>14 Q. So did you evaluate this policy from a 15 compliance perspective?</p> <p>16 A. I wouldn't say I evaluated -- I evaluated 17 this policy.</p> <p>18 Q. Were there, I'm going to use the word 19 "thresholds," are you familiar with the word 20 "threshold" --</p> <p>21 A. I am.</p> <p>22 Q. -- in the context of registrants?</p> <p>23 Were there thresholds in place for 24 pharmacy customers at the time of this policy?</p>	<p style="text-align: center;">Page 128</p> <p>1 order?</p> <p>2 A. They would handle the orders as they came 3 in.</p> <p>4 Q. How many customers did H.D. Smith have in 5 2005, approximately?</p> <p>6 A. It would -- well, it would depend on what 7 distribution center you are talking about. The 8 Springfield or -- or --</p> <p>9 Q. Nationally how many customers?</p> <p>10 A. In 2005, I -- I don't have any idea. I -- 11 we had -- I'm not even sure how many distribution 12 centers we had at that time because there was a period 13 of time where we were opening or making acquisitions 14 or what have you.</p> <p>15 Q. Okay. But if a picker doesn't have the 16 regular customer that they are picking for each month, 17 how is it that they are going to know whether or not 18 an order on any given month is excessive? In other 19 words, one month they may get Pharmacy X and the next 20 month they may get Pharmacy Y, how can they compare 21 the two?</p> <p>22 A. Usually our customers order every day.</p> <p>23 Q. Okay. So how is it that a picker -- is 24 there some reference manual, is there some database,</p>
<p style="text-align: center;">Page 127</p> <p>1 A. Not that I'm aware of.</p> <p>2 Q. So the only -- what was the basis for a 3 picker to determine whether or not an order was 4 excessive? Just their memory of the prior month's 5 order?</p> <p>6 A. It would have been their knowledge of 7 the -- of the customer, their ordering history, their 8 day-to-day, everyday phone orders.</p> <p>9 Q. I think you mentioned that this was a -- a 10 very veteran person in the company, there was not 11 much -- much turnover among the pickers?</p> <p>12 A. Not to my knowledge, no.</p> <p>13 Q. Was this a highly compensated position?</p> <p>14 A. I don't know if it would be highly 15 compensated. It was -- you know, there were veteran 16 or, you know, experienced people that had had many 17 years on, so I don't know exactly, you know, how they 18 were compensated, if they got increases in wages when 19 they went into the cage or vault. I can't answer 20 that.</p> <p>21 Q. How many pharmacy customers did each 22 picker pick for in a given month? Was it -- did they 23 have designated customers they always picked for or 24 was it an order came in and you just handled that</p>	<p style="text-align: center;">Page 129</p> <p>1 is there -- is there someplace for a picker to go when 2 they get an order for a customer they are not familiar 3 with to determine whether or not that order is 4 unusual? And specifically I ask that because of your 5 prior testimony indicating there was no threshold for 6 these customers. So how -- how are they to know, 7 what's the -- what's the basis?</p> <p>8 A. I can't answer that.</p> <p>9 Q. Okay. Let's see.</p> <p>10 Do you know whether or not there was any 11 training provided to operations managers for their 12 role as the controlled substance coordinators?</p> <p>13 A. What time period?</p> <p>14 Q. In '05, it's admittedly prior to when you 15 got there?</p> <p>16 A. I -- I don't know.</p> <p>17 Q. How about in '06?</p> <p>18 A. I implemented training in 2006 after 19 our -- our meeting with DEA in January of 2006.</p> <p>20 Q. What type of training did you undertake 21 for the operations managers?</p> <p>22 A. It was mainly regarding orders related to 23 internet pharmacies which was the basis of our 24 discussion in 2006, January of 2006 with DEA. I</p>

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<p style="text-align: center;">Page 130</p> <p>1 used -- I may have used their whole PowerPoint that 2 they presented to me in addition to other information 3 I would have had to try to educate them on looking 4 at -- at orders that may be suspicious.</p> <p>5 Q. That PowerPoint, do you know if it was 6 shared with them via e-mail or was it something that 7 you put on live on the screen?</p> <p>8 A. I went to each distribution center.</p> <p>9 [REDACTED]</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14 manager making decisions, did the operation managers 15 have access to data, a database or a system that they 16 could use to compare prior months' orders?</p> <p>17 A. I believe the way that -- the way that 18 their reports came out at the end of each month they 19 would have access to monthly reports on controlled 20 substances purchased by our customers. So they could 21 reference previous months if they wanted to.</p> <p>22 Q. And was there any type of formula or 23 algorithm used by the company to determine whether or 24 not an order was excessive as compared to prior</p>	<p style="text-align: center;">Page 132</p> <p>1 Q. And at the time of this policy, while this 2 was in place, it was the practice of H.D. Smith to 3 ship orders and later review whether or not they would 4 be reported to the DEA.</p> <p>5 Is that accurate?</p> <p>6 A. It was a policy that if -- if pickers 7 would identify orders beforehand they could be 8 reported to DEA as suspicious, but also, you know, as 9 the policy says, there was a monthly review, as was 10 industry standard and the expectation from DEA.</p> <p>11 Q. But the -- the order that the picker 12 identified, was that shipped or was that held?</p> <p>13 A. You'd have to be more specific on what -- 14 what our -- it would more like -- my understanding, it 15 would be held until we would discuss it with DEA.</p> <p>16 Q. Was that in the policy somewhere?</p> <p>17 A. I think it's in here somewhere about 18 discussing it with DEA field office.</p> <p>19 Q. Yeah, I think the --</p> <p>20 A. It is right below your highlighted --</p> <p>21 Q. Yeah.</p> <p>22 A. -- part on the second page.</p> <p>23 Q. Yeah, let's -- let's dig into that a 24 little bit.</p>
<p style="text-align: center;">Page 131</p> <p>1 months?</p> <p>2 A. Not at that time.</p> <p>3 Q. But at some point I guess with the role of 4 the automated system there was a calculation or 5 algorithm?</p> <p>6 A. Yes.</p> <p>7 Q. And we'll -- we'll talk about that in just 8 a sec.</p> <p>9 Do you know whether or not there were -- 10 other than the -- the typical monthly review that's 11 contemplated by this policy, were there ad hoc reviews 12 done by operation managers of pharmacies?</p> <p>13 MR. PADGETT: Object to form.</p> <p>14 BY MR. YOUNG:</p> <p>15 Q. For -- for purposes of the controlled 16 substance monitoring, I should mention.</p> <p>17 MR. PADGETT: Same objection.</p> <p>18 BY THE WITNESS:</p> <p>19 A. I -- I don't know. You know, I was in 20 communication with -- with the operations managers. 21 What we discussed, if I -- we discussed certain 22 accounts, I -- I just -- I'm not -- I can't tell you. 23 I can't remember.</p> <p>24 BY MR. YOUNG:</p>	<p style="text-align: center;">Page 133</p> <p>1 There is a -- a highlighted portion 2 that -- can you read that for us?</p> <p>3 A. On Page 2?</p> <p>4 Q. Yes.</p> <p>5 A. "If while picking, an excessive purchase 6 is discovered it will be brought to the attention of 7 the Controlled Substance Coordinator. A check with 8 the local DEA office will be made before shipping of 9 the individual order."</p> <p>10 Q. So there was a policy in place at the 11 time, this policy, that says if you identify an 12 excessive purchase, check with the operations manager 13 who is the controlled substances coordinator, right?</p> <p>14 A. Correct.</p> <p>15 Q. And it doesn't really say who. I assume 16 it's the operations manager. It says: "A check with 17 the local DEA office will be made before shipping of 18 the individual order."</p> <p>19 That's your recollection of what took 20 place in 2005?</p> <p>21 A. That's my understanding. And I think --</p> <p>22 MR. PADGETT: Object to form.</p> <p>23 Go ahead.</p> <p>24 BY THE WITNESS:</p>

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<p style="text-align: right;">Page 134</p> <p>1 A. -- that's what's in the policy.</p> <p>2 BY MR. YOUNG:</p> <p>3 Q. Do you know how long it took to hear back</p> <p>4 from the DEA when you reported suspicious orders at</p> <p>5 the time?</p> <p>6 A. To my knowledge, we would never hear back</p> <p>7 from DEA.</p> <p>8 Q. Okay. So if you were to check with the</p> <p>9 DEA before shipping and you never heard back from the</p> <p>10 DEA, I take it that, then, the order never shipped?</p> <p>11 MR. PADGETT: Object to form.</p> <p>12 BY MR. YOUNG:</p> <p>13 Q. Is that accurate?</p> <p>14 A. No, that is not necessarily true.</p> <p>15 A check with the local DEA, that would --</p> <p>16 in my mind that means you would call the DEA, check --</p> <p>17 in this case you would try to talk to Garriott and</p> <p>18 discuss the order with him. Now, I wasn't there. I</p> <p>19 don't know exactly what happened, but that's -- that</p> <p>20 would be my assumption.</p> <p>21 And then it says, you know, in the next --</p> <p>22 next paragraph: "If" -- "If the local DEA office</p> <p>23 cannot be contacted before shipping, it should be</p> <p>24 brought to their attention as soon as possible."</p>	<p style="text-align: right;">Page 136</p> <p>1 generalities. I want to understand what H.D. Smith</p> <p>2 did generally.</p> <p>3 So when -- under this policy when a picker</p> <p>4 identified an excessive purchase and brought it to the</p> <p>5 attention of the controlled substances coordinator,</p> <p>6 who was the operations manager, it was the policy to</p> <p>7 check with the DEA office. And what I want to know</p> <p>8 is, prior to the new policy, under this policy,</p> <p>9 whether or not generally orders shipped or did not</p> <p>10 ship? If you can't say, you can't say.</p> <p>11 A. I -- I don't know.</p> <p>12 Q. Yeah. Okay.</p> <p>13 I had previously showed you some -- some</p> <p>14 DEA investigation reports. I know you weren't</p> <p>15 familiar with them, but those order -- those</p> <p>16 investigation reports indicated that those orders</p> <p>17 which were reported as suspicious had, in fact, been</p> <p>18 shipped.</p> <p>19 Does that surprise you or is that</p> <p>20 consistent with your recollection of what occurred at</p> <p>21 H.D. Smith prior to implementation of the automated</p> <p>22 pol- -- policy?</p> <p>23 MR. PADGETT: Object to the form.</p> <p>24 You can answer.</p>
<p style="text-align: right;">Page 135</p> <p>1 So it was still the expect -- the --</p> <p>2 the -- the expectation of the DEA and the way this</p> <p>3 policy is written is that, you know, that -- that</p> <p>4 order, if they could not get ahold of the DEA to</p> <p>5 discuss it with them, my assumption is it would be</p> <p>6 shipped and then discussed with DEA at a later time.</p> <p>7 Q. And this policy was in place for part of</p> <p>8 your initial tenure with H.D. Smith, right?</p> <p>9 A. It was.</p> <p>10 Q. So from the time that you got to</p> <p>11 H.D. Smith until you implemented the new policy, what</p> <p>12 you just described is what occurred, right, that the</p> <p>13 order would -- would be shipped?</p> <p>14 MR. PADGETT: Object to form.</p> <p>15 BY THE WITNESS:</p> <p>16 A. It depends on what the circumstance was</p> <p>17 and if they were able to get ahold of -- of Garriott,</p> <p>18 and I don't know if the order was -- first of all,</p> <p>19 you'd have to be specific on what order and I don't</p> <p>20 know if it was shipped or it wasn't.</p> <p>21 BY MR. YOUNG:</p> <p>22 Q. Yeah. And I'm --</p> <p>23 A. I'm only going by the policy.</p> <p>24 Q. And admittedly I'm speaking in</p>	<p style="text-align: right;">Page 137</p> <p>1 BY THE WITNESS:</p> <p>2 A. It wouldn't surprise me. You know, the</p> <p>3 enclosure down here says DEA purchase report, you</p> <p>4 know, for a month's time, and -- and this is a period</p> <p>5 later, so I'm assuming that they were shipped. I</p> <p>6 don't know for a fact.</p> <p>7 BY MR. YOUNG:</p> <p>8 Q. Okay. Do you know whether or not there</p> <p>9 was consistent implementation and execution of this</p> <p>10 policy at each of the distribution centers?</p> <p>11 MR. PADGETT: Object to form, scope.</p> <p>12 BY MR. YOUNG:</p> <p>13 Q. From -- from '05 to '08?</p> <p>14 A. That was the expectation.</p> <p>15 Q. But you didn't test or verify whether or</p> <p>16 not each of the distribution centers was complying</p> <p>17 with this policy?</p> <p>18 A. No.</p> <p>19 Q. Was there anyone charged with auditing or</p> <p>20 testing whether or not there was compliance with this</p> <p>21 policy?</p> <p>22 A. Not to my knowledge.</p> <p>23 Q. Do you know whether or not operations</p> <p>24 managers prior to your PowerPoint training were aware</p>

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<p style="text-align: center;">Page 138</p> <p>1 of the statutory definition of suspicious orders?</p> <p>2 MR. PADGETT: Object to form.</p> <p>3 BY THE WITNESS:</p> <p>4 A. I would have -- I would have no way of</p> <p>5 knowing that.</p> <p>6 BY MR. YOUNG:</p> <p>7 Q. Really what I'm asking is, other than this</p> <p>8 policy, was there any other information that was given</p> <p>9 to operations managers about compliance with the</p> <p>10 Controlled Substances Act reporting requirements?</p> <p>11 A. Prior to me arriving there, I do not know.</p> <p>12 Q. How about after you arrived and except</p> <p>13 your PowerPoint instruction?</p> <p>14 A. Well, I conducted an annual compliance</p> <p>15 meetings at all of our distribution centers.</p> <p>16 Q. The -- you -- H.D. Smith maintained a</p> <p>17 Louisville, Kentucky distribution center during this</p> <p>18 time.</p> <p>19 Is that accurate?</p> <p>20 A. Which time period?</p> <p>21 Q. '06 through '08.</p> <p>22 A. I don't think the Louisville distribution</p> <p>23 center opened until 2007.</p> <p>24 Q. Okay.</p>	<p style="text-align: center;">Page 140</p> <p>1 Q. After an operations manager made a report</p> <p>2 to the DEA about a suspicious order, do you know</p> <p>3 whether or not they would inform the pharmacy customer</p> <p>4 of that report to the DEA? Was that --</p> <p>5 A. The practice was to not.</p> <p>6 Q. But it's possible that they did have those</p> <p>7 conversations?</p> <p>8 MR. PADGETT: Object to the form.</p> <p>9 BY THE WITNESS:</p> <p>10 A. I highly doubt it.</p> <p>11 BY MR. YOUNG:</p> <p>12 Q. Do you know whether or not the sales --</p> <p>13 I'll refer to them as the sales staff.</p> <p>14 Does H.D. Smith have sales staff?</p> <p>15 A. Yes.</p> <p>16 Q. Do you know whether or not the sales staff</p> <p>17 enter -- whether or not the sales staff ever</p> <p>18 intervened on behalf of a pharmacy customer to prevent</p> <p>19 the reporting of a suspicious order?</p> <p>20 A. Not to my knowledge.</p> <p>21 Q. Okay. Moving right along.</p> <p>22 MR. PADGETT: What time do you want to break for</p> <p>23 lunch?</p> <p>24 MR. YOUNG: Oh, what time is it?</p>
<p style="text-align: center;">Page 139</p> <p>1 A. I don't know the exact date.</p> <p>2 Q. Fair enough.</p> <p>3 Do you know whether or not the Louisville,</p> <p>4 Kentucky distribution center would have been the</p> <p>5 center to ship into Ohio, the State of Ohio?</p> <p>6 A. Again, it would depend on the time period.</p> <p>7 Prior -- I don't know --</p> <p>8 Q. Let me rephrase it.</p> <p>9 A. It would depend on the time period.</p> <p>10 Q. Let me rephrase it.</p> <p>11 In 2007, where would Ohio pharmacies who</p> <p>12 are customers of H.D. Smith have obtained their</p> <p>13 products from, which center?</p> <p>14 A. It would probably, and I don't even know</p> <p>15 if they had Ohio customers in 2006, but it would</p> <p>16 probably be Illinois or Louisville.</p> <p>17 Q. And do you know today where Ohio customers</p> <p>18 get their products from?</p> <p>19 A. More than likely Louisville. They could</p> <p>20 be some coming from New York metro and -- and Illinois</p> <p>21 could have some and we used to have a Smith Medical</p> <p>22 Partners that's no longer around that would have</p> <p>23 shipped possibly into Ohio. They were licensed in</p> <p>24 Ohio.</p>	<p style="text-align: center;">Page 141</p> <p>1 MR. PADGETT: It is 12:05 right now. But if you</p> <p>2 go to 12:15, that would be another hour,</p> <p>3 hour-and-a-half block.</p> <p>4 MR. YOUNG: I'm just trying to see where we can</p> <p>5 find a nice, natural break here. I guess we can -- I</p> <p>6 guess let's do it now. How long have we been going</p> <p>7 since the last break?</p> <p>8 MR. PADGETT: About an hour.</p> <p>9 MR. LEEDER: A little over an hour.</p> <p>10 MR. PADGETT: About an hour and ten.</p> <p>11 MR. YOUNG: All right. Let's do it. We have to</p> <p>12 keep the witness fed.</p> <p>13 THE VIDEOGRAPHER: We are off the record at</p> <p>14 12:04 p.m.</p> <p>15 (WHEREUPON, a recess was had</p> <p>16 from 12:04 to 1:02 p.m.)</p> <p>17 THE VIDEOGRAPHER: We are back on the record at</p> <p>18 1:02 p.m.</p> <p>19 BY MR. YOUNG:</p> <p>20 Q. Mr. Euson, we just broke for lunch.</p> <p>21 During lunch did you have occasion to</p> <p>22 speak with your counsel?</p> <p>23 A. I did.</p> <p>24 Q. Did any of the communications between you</p>

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<p style="text-align: center;">Page 142</p> <p>1 and your counsel affect or impact the testimony that 2 you've already provided?</p> <p>3 A. I wanted to make a clarification on a 4 previous testimony.</p> <p>5 Q. Okay. We'll get to that in a second.</p> <p>6 A. Okay.</p> <p>7 Q. Did any of the communications with your 8 counsel serve to prepare you further for the rest of 9 the deposition for 30(b)(6) purposes?</p> <p>10 A. No.</p> <p>11 Q. There was no preparatory comments or get 12 ready for this or expect this?</p> <p>13 A. No.</p> <p>14 Q. So you mentioned you wanted to clarify 15 something. What is it?</p> <p>16 A. You had asked me about West Virginia and I 17 had -- I had misspoke and I wanted to clarify. I said 18 it was a fine in West Virginia. It was a settlement 19 with no admission of any wrongdoing.</p> <p>20 Q. And that's your recollection or your 21 attorneys informed you of that?</p> <p>22 A. Well, I asked them for the clarification.</p> <p>23 Q. Were you involved in the, I don't want to 24 say the legal aspect of it, but were you as the chief</p>	<p style="text-align: center;">Page 144</p> <p>1 A. To develop a better process and procedure. 2 Q. Did H.D. Smith determine that it was -- 3 its current practices were in violation of the 4 Controlled Substances Act without implementing an 5 automated system?</p> <p>6 A. No.</p> <p>7 Q. So H.D. Smith could have, if it so chose, 8 have continued with the manual version of its 9 compliance program without violating the CSA?</p> <p>10 MR. PADGETT: Object to form.</p> <p>11 BY THE WITNESS:</p> <p>12 A. There is no -- there is no regulation that 13 an -- that an auto monitoring system has to -- or 14 program has to be manual or automated.</p> <p>15 BY MR. YOUNG:</p> <p>16 Q. And -- and I want to be clear in my 17 question. I'm not just referring to the manual versus 18 automated functionality, but all of the elements of 19 what H.D. Smith did in complying with the CSA prior to 20 implementation of the automated program, when 21 H.D. Smith made the decision to go to the automated 22 program, did it determine whether or not its existing 23 or prior program was in or out of compliance with the 24 CSA?</p>
<p style="text-align: center;">Page 143</p> <p>1 compliance officer personally involved in the 2 settlement that was negotiated between the West 3 Virginia AG and H.D. Smith?</p> <p>4 A. I was not.</p> <p>5 Q. Okay.</p> <p>6 Okay. So, where we left off was sort of 7 the first generation of your compliance process and 8 policies and we called that the manual phase, I think, 9 or the manual program, prior to the automated program, 10 right?</p> <p>11 And so I want to now veer into the 12 automated program and -- and learn a little bit about 13 that.</p> <p>14 The -- when was the first instance in 15 which H.D. Smith determined that it needed to create 16 an automated program?</p> <p>17 A. When you say "needed," do you -- do you 18 reference that as some type of a requirement?</p> <p>19 Q. Let me -- let me rephrase it.</p> <p>20 When did H.D. Smith decide that it wanted 21 to create an automated compliance program?</p> <p>22 A. Probably mid 2006.</p> <p>23 Q. And what were the factors that H.D. Smith 24 considered in making that decision?</p>	<p style="text-align: center;">Page 145</p> <p>1 MR. PADGETT: Object to form.</p> <p>2 BY THE WITNESS:</p> <p>3 A. We were -- we were in compliance with CSA. 4 We wanted to improve the process.</p> <p>5 BY MR. YOUNG:</p> <p>6 Q. Okay. So H.D. Smith has never violated 7 the Controlled Substances Act?</p> <p>8 MR. PADGETT: Object to form.</p> <p>9 BY THE WITNESS:</p> <p>10 A. What part of it?</p> <p>11 BY MR. YOUNG:</p> <p>12 Q. Any part of it.</p> <p>13 A. Not to my knowledge.</p> <p>14 Q. Okay.</p> <p>15 A. No.</p> <p>16 Q. The -- when did the -- I'm going to call 17 it the CSOMP program, and I don't mean to -- to coin 18 that phrase, but I think that's the phrase that 19 H.D. Smith uses, right?</p> <p>20 A. It is for our automated system.</p> <p>21 Q. And what does CSOMP stand for?</p> <p>22 A. Controlled Substance Order Monitoring 23 Program.</p> <p>24 Q. When was that program live, when did it go</p>

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<p style="text-align: center;">Page 146</p> <p>1 live?</p> <p>2 A. It was -- it was rolled out to our</p> <p>3 different DCs in the spring of 2008, I believe, from</p> <p>4 beginning of March through the end of May. I don't</p> <p>5 have the exact dates, but it was by divi-- you know,</p> <p>6 division by division.</p> <p>7 Q. Do you -- do you recall which division you</p> <p>8 rolled out to first?</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> 	<p style="text-align: center;">Page 148</p> <p>1 chemicals, and also at the time, again, you have to</p> <p>2 reference the time period, at the time there was a</p> <p>3 part of the Chemical -- Chemical Handler's Manual that</p> <p>4 referred to suspicious orders and a loose template</p> <p>5 on -- regarding that.</p> <p>6 Q. Was the Chemical Handler's Manual</p> <p>7 something that Amerisource had relied upon in</p> <p>8 developing its system, if you know?</p> <p>9 A. I do not know that.</p> <p>10 Q. Is it something that you discussed with</p> <p>11 Mr. Zimmerman from Amerisource?</p> <p>12 A. I don't recall.</p> <p>13 Q. I'm going to show you what was premarked</p> <p>14 as Euson Deposition Exhibit 21. It's -- frankly, it's</p> <p>15 an excerpt. We don't have the full manual. There is</p> <p>16 a -- a cover page and then there is an Appendix E-3.</p> <p>17 I'll show you that.</p> <p>18 MR. PADGETT: Sorry. Which exhibit?</p> <p>19 MR. YOUNG: 21, I believe. It should be.</p> <p>20 Yeah. Here you go.</p> <p>21 BY MR. YOUNG:</p> <p>22 Q. Does that exhibit look familiar to you?</p> <p>23 A. Yes.</p> <p>24 Q. The Page 2 of the exhibit, Appendix E-3,</p>
<p style="text-align: center;">Page 147</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10 Q. Did he share with you the details or the</p> <p>11 content of what went into their system?</p> <p>12 A. More of the concept, not specific details.</p> <p>13 At the same time I was in communication with -- with</p> <p>14 Kyle Wright at the DEA. I believe Kyle Wright and --</p> <p>15 and head of diversion at the time Mike Mapes, were</p> <p>16 working with AmerisourceBergen on that also, so it --</p> <p>17 it was more a conceptual, not the specific details of</p> <p>18 it.</p> <p>19 Q. Are you familiar with a -- a document</p> <p>20 called the Chemical Handler's Manual?</p> <p>21 A. I am.</p> <p>22 Q. How -- how do you know the Chemical</p> <p>23 Handler's Manual?</p> <p>24 A. It is a manual concerning List I</p> 	<p style="text-align: center;">Page 149</p> <p>1 it -- it's a list of terms and definitions.</p> <p>2</p> <p>3</p> <p>4</p> <p>5 A. Can you give me a second to read this?</p> <p>6 Q. Sure.</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> 

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8 Q. I gotcha.
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13 Q. Okay. Prior to the implementation of your
14 automated system, your CSOMP system, did you have
15 established customer thresholds that they could order?

16 A. Before CSOMP?

17 Q. Yes.

18 A. Yeah, I think it does describe before that
19 we did not.

20 Q. I just want to make sure.

21 And part of the implementation of CSOMP
22 was creating customer thresholds, is that correct?

23 A. Yes, that was one of the things that we
24 did with the system.

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1 A. Okay.
2 Q. We'll -- we'll just kind of build it as we
3 go.
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1 Q. And I'm just sort of taking your prior
2 testimony and your testimony about the adoption of the
3 Chemical Handler's Manual.
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9 Q. Okay.
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16 MR. PADGETT: I'll object to form.

17 BY THE WITNESS:
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23 BY MR. YOUNG:
24 Q. Okay. Let me -- let me stop you there.

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13 Q. And that was also something that was new
14 to H.D. Smith, you hadn't done that in the manual
15 system, right?
16 A. No.
17 Q. And you hadn't used families under the
18 manual system either?
19 A. Not specifically, but I think the -- the
20 reports that the managers went through every month,
21 they were grouped somehow. I got all controlled
22 substances. I don't know if they were grouped
23 alphabetically or by different classes, but there
24 would be a -- it would have been the first time we

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<p style="text-align: center;">Page 154</p> <p>1 would have defined customers by volume and defined 2 families of drugs. 3 Q. Okay. So you got the customer size and 4 type and you've got the families. 5 What are the other factors that went into 6 determining whether an order was potentially 7 suspicious? 8 A. These are factors on how we designed our 9 system. 10 Q. Okay. 11 A. Not factors that pointed to a suspicious 12 order. 13 Q. Got you. 14 A. A potentially suspicious order. 15 Q. Let's -- let's go into building the system 16 first. 17 A. Okay.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: center;">Page 156</p> <p>1 basis was what you just described and it could change 2 over time with the purchases of the pharmacy customer? 3 A. Yes.</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20 Q. Do you know --</p> <p>21 A. And this is no longer in the Chemical 22 Handler's Manual.</p> <p>23 Q. Okay.</p> <p>24 Do you know whether or not Cardinal or</p>
<p style="text-align: center;">Page 155</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19 Q. Okay.</p> <p>20</p> <p>21</p> <p>22</p> <p>23 Q. Sure. Under -- understood.</p> <p>24 But that was the original -- the original</p>	<p style="text-align: center;">Page 157</p> <p>1 McKesson similarly adopted CSOMP systems of their own 2 at that time?</p> <p>3 MR. PADGETT: Object to form.</p> <p>4 BY THE WITNESS:</p> <p>5 A. I don't know.</p> <p>6 BY MR. YOUNG:</p> <p>7 Q. Were you a member of the Healthcare 8 Distribution Management Association at the time?</p> <p>9 A. I was.</p> <p>10 Q. Did you serve on any committees or 11 subcommittees or boards or panels for the HDMA?</p> <p>12 A. I was on two committees, regulatory 13 affairs committee and the state government affairs 14 committee.</p> <p>15 Q. And did your work on those committees 16 touch upon the development of these types of systems, 17 the CSOMP system?</p> <p>18 A. It -- it did. Again, there was -- as I 19 stated before, there was no -- there is no system that 20 DEA endorses. There is no -- there was no template 21 for it. And -- and -- and even with a trade 22 association, you've got antitrust issues and such as 23 far as how much you can discuss with competitors.</p> <p>24 Q. Were there representatives from</p>

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<p style="text-align: center;">Page 158</p> <p>1 Amerisource on the committee that you described that 2 touched on this compliance work?</p> <p>3 A. I believe Chris Zimmerman was on that.</p> <p>4 Q. Were there representatives from McKesson 5 on that committee?</p> <p>6 A. I believe so.</p> <p>7 Q. Were there representatives from Cardinal?</p> <p>8 A. I believe so.</p> <p>9 Q. And so did you meet regularly as a 10 committee?</p> <p>11 A. There were periodic calls and there was a 12 one-time-a-year face-to-face meeting that sometimes I 13 made, sometimes I didn't, and other members the same 14 way.</p> <p>15 Q. Were there other representatives from 16 H.D. Smith who would attend a committee meeting in 17 your absence?</p> <p>18 A. Again, it depends on the time period. There were other people in my position when I was not 20 at the company and there were other people that 21 were -- could have gone to those meetings and in lieu 22 of me going.</p> <p>23 Q. I'm going to show you what was premarked 24 as Euson Exhibit 22. It's a longer document than</p>	<p style="text-align: center;">Page 160</p> <p>1 BY THE WITNESS:</p> <p>2 A. I would have to study this again and get 3 into the weeds with it to --</p> <p>4 BY MR. YOUNG:</p> <p>5 Q. All right. Let's -- let's walk through a 6 little bit of the document.</p> <p>7 A. Okay.</p> <p>8 Q. So let's turn to page -- I think it's -- 9 keep going -- page, what page is that? 6 of 13. 10 There is a Roman numeral section: Monitoring for 11 Suspicious Orders, System Design.</p> <p>12 A. Monitoring for Suspicious Orders?</p> <p>13 Q. Yes.</p> <p>14 A. Okay.</p> <p>15 Q. Okay. So that section, it looks like it 16 says: "It is recommended that a distributor develop 17 an electronic system..."</p> <p>18 H.D. Smith did that, right?</p> <p>19 A. Yes.</p> <p>20 Q. "...with accompanying written standard 21 operating procedures."</p> <p>22 Do you know whether there were SOPs at 23 H.D. Smith at the time the CSOMP rolled out?</p> <p>24 A. We did develop SOPs at the time.</p>
<p style="text-align: center;">Page 159</p> <p>1 we've been handing you. So it might take you a bit to 2 look at it.</p> <p>3 Let me know if you are familiar with this 4 document?</p> <p>5 A. I'm familiar.</p> <p>6 Q. How are you familiar with this document?</p> <p>7 Where do you know it from?</p> <p>8 A. It's from HDMA.</p> <p>9 Q. Did you have a hand, through your 10 committee work, in creating this document?</p> <p>11 A. I believe that the -- I -- I don't even 12 know which committee. It may have been the regulatory 13 affairs committee that may have had a hand in -- in -- 14 in this. I know they also worked with some outside 15 consultants.</p> <p>16 Q. Do you recall receiving drafts or 17 participating in the drafting yourself of this end 18 product?</p> <p>19 A. I probably did. I can't say specifically.</p> <p>20 Q. Do you know whether or not the CSOMP 21 system that H.D. Smith implemented in the spring 22 of 2008 met the guidelines that HDMA developed in this 23 document?</p> <p>24 MR. PADGETT: Object to form.</p>	<p style="text-align: center;">Page 161</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15 Q. Okay. Because it is such a small part of 16 the business, is that why?</p> <p>17 A. I can't tell you why our system doesn't 18 identify it.</p> <p>19 Q. Okay.</p> <p>20 All right. Let's flip the page. The next 21 section, let's just pull this down here, it says:</p> <p>22</p> <p>23</p> <p>24</p>

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12 Q. So, but beneath that bulleted point there
13 are some other options to identify families and I -- I
14 didn't know if you had used one of those to develop
15 your -- your system.

16 The second one is using the NTIS system or
17 the NDC number for the active ingredients.

18 Do you recall?

19 A. We -- we originally, when we beta tested
20 our system in 2006 and '7, we tried to use the NDC
21 code, and there are so many variables of the same drug
22 using the NDC code it became unusable in our --

23 Q. Okay.

24 A. -- system.

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8 Q. Can you put some date connection to these
9 changes in the system, if you recall? So let's --
10 let's start with the first change.

11 The system began with a three times
12 multiplier. What was the first change to that three
13 times multiplier, when did that occur?

14 A. It had to have been after I came back,
15 because I left -- after we rolled out CSOMP to our
16 last distribution center, I left about a month after
17 that.

18 Q. Okay.

19 A. So it would have been sometime after I
20 came back, so sometime in 2009.

21 Q. Did the change to CSOMP when you returned,
22 was that because of something that you learned when
23 you were away from H.D. Smith?

24 A. No. It was -- it was more trying to

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1 Q. Okay. Section C is: "Develop thresholds
2 to identify orders of interest."

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7 Q. The third paragraph of this section says:
8 "Distributors are encouraged to update these
9 quantities for determining averages by evaluating
10 schedules, products or families of products and other
11 information made available by the agency to determine
12 an appropriate benchmark for identifying controlled
13 substance orders of interest."

14 That's not so much of a system expectation
15 as it is a sort of policy or procedure expectation of
16 H.D. Smith.

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1 constantly evolve and -- and make our system better
2 and -- and better meet our -- our customers' needs
3 and -- and their legitimate, you know -- you know,
4 sup- -- supply of drugs.

5 Q. One of the examples that this HDMA
6 guidance document includes is the geographical area,
7 the uniqueness of the geographical area.

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24 Q. At some point did you move away from that
approach or is that how it is today?

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<p style="text-align: center;">Page 166</p> <p>1 2 3 4 5 6 7 8</p> <p>9 Q. When was the first time that that change 10 was incorporated into the system?</p> <p>11 A. I'm not sure. It would have been before I 12 left in 2013, but I just don't -- I don't have the 13 specific date. I could find it, but I just --</p> <p>14 Q. Do you -- that's okay.</p> <p>15 Do you know the geographic area that -- or 16 areas that you considered in -- in making this change? 17 In other words, was it one part of the country that 18 you thought was skewing things or was it multiple 19 parts?</p> <p>20 A. It was -- it was different parts of the 21 country and different drugs that were at issue.</p> <p>22 Q. Do you recall which parts of the country 23 it was?</p> <p>24 A. You know, Florida had a -- an oxycodone</p>	<p>1 various things. There is books out about it. There 2 is a -- there were certain physicians, practitioners 3 that we identified in certain areas of -- of the 4 country. And where we found those practitioners with 5 what we would consider questionable prescribing 6 habits, that's where there would be issues.</p> <p>7 Q. And you said this was in 2013?</p> <p>8 A. When we made the change?</p> <p>9 Q. Yes.</p> <p>10 A. I -- I am getting on that.</p> <p>11 Q. Okay. I won't hold you to it. I don't -- 12 I don't want you to guess.</p> <p>13 So let's just pull this down here. Going 14 on to Page 8 of that guideline document from HDMA, 15 it -- it also says that:</p> <p>16 "Distributors are encouraged to consider 17 the following when developing 'thresholds.'" And I 18 just want to tick down this bullet list to see if 19 HDA -- if H.D. Smith incorporated these 20 considerations.</p> <p>21 The first one is: "Quantities of products 22 the dispenser initially indicated during the 'Know 23 Your Customer' due diligence phase it expected to 24 purchase."</p>
<p style="text-align: center;">Page 167</p> <p>1 problem, not a hydrocodone problem. The Houston area 2 in Texas had a hydrocodone problem. Middle Tennessee, 3 you know, had an oxycodone problem. California had a 4 hydro -- a hydrocodone problem and promethazine with 5 codeine problem.</p> <p>6 So we tried to keep track of the different 7 issues in different areas and tried to -- again, we 8 were always trying to improve our -- our system and 9 the processes that we were using.</p> <p>10 Q. Do you recall if Ohio was one of the 11 geographic areas that had a problem that was 12 considered here?</p> <p>13 A. Where specifically in Ohio?</p> <p>14 Q. Anywhere in Ohio?</p> <p>15 A. There is -- down in the southeast portion 16 of the state, Portsmouth area was a problem, Columbus 17 area was a problem.</p> <p>18 Q. And how did you determine that the 19 southeast part of Ohio was a problem? What was the 20 basis for that conclusion?</p> <p>21 A. Research --</p> <p>22 Q. What --</p> <p>23 A. -- news articles. You know, I -- I get 24 daily feeds from Google alerts, you know, on -- on</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p style="text-align: center;">Page 169</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>

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<p style="text-align: right;">Page 170</p> <p>1 2 3 4 5 6 7 8 9</p> <p>10 Q. Was it common for pharmacies to purchase 11 controlled substances from more than one distributor? 12 A. Yes. 13 Q. Would -- would it also be common for 14 distributors to discontinue doing business with 15 customers that order too much controlled substances? 16 A. What do you mean by too much? 17 Q. Suspicious orders. So if a distributor 18 like H.D. Smith determined that its customers were 19 submitting suspicious orders, would H.D. Smith 20 discontinue doing business with that customer? 21 A. It was commonly our practice that if we 22 identified orders that were suspicious and we reported 23 them to DEA -- and part of our investigation, again, 24 would be to go to the pharmacy, get dispensing</p>	<p>1 2 3 4 5 6 7 8 9</p> <p>10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>
<p style="text-align: right;">Page 171</p> <p>1 information, you know, launch an investigation. And I 2 would say more -- more times the norm would have been 3 that we would discontinue controlled substances to 4 that pharmacy if we had reason to believe there may be 5 diversion going on. 6 Q. And do you know whether or not that 7 pharmacy would seek to obtain the controlled 8 substances that it sought from H.D. Smith from another 9 distributor? In other words, was there communication 10 among distributors about these suspicious ordering 11 pharmacies? 12 A. No. There were -- at one time DEA was 13 sending out a list of pharmacies that other 14 wholesalers had either closed or declined to do 15 business with. That practice was discontinued after a 16 short time. 17 Q. Okay. Turning back to this guideline, 18 Section (d) talks about -- (d) talks about "Cumulative 19 Reviews Or Thresholds." It says: 20 "The system should contain a mechanism for 21 periodic review of cumulative orders from the same 22 customer over time, to evaluate trends in purchasing 23 patterns." 24</p>	<p>1 2 3 4 5 6 7 8 9</p> <p>10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>

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<p style="text-align: right;">Page 174</p> <p>1 [REDACTED]</p> <p>2</p> <p>3</p> <p>4 Q. What type of evidence would exist in</p> <p>5 H.D. Smith's records that would allow us to discern</p> <p>6 whether or not a pharmacy was subject to a deeper dive</p> <p>7 for being over the 20 percent?</p> <p>8 A. We have due diligence records on all of</p> <p>9 our customers.</p> <p>10 Q. Okay. So if we were to look at the due</p> <p>11 diligence documents for a pharmacy that was at some</p> <p>12 point in time over 20 percent controlleds to</p> <p>13 non-controlledds, we should see some record in the due</p> <p>14 diligence file of an evaluation?</p> <p>15 A. I -- I can't tell you that there would</p> <p>16 always be one there.</p> <p>17 Q. But there --</p> <p>18 A. We did -- we did these, these were --</p> <p>19 these were manual processes that we went through to</p> <p>20 identify customers that we could have -- you know,</p> <p>21 there may be a concern.</p> <p>22 Q. There was no automation of this in the new</p> <p>23 CSOMP system?</p> <p>24 A. It was not a part of CSOMP. It was --</p>	<p style="text-align: right;">Page 176</p> <p>1 that.</p> <p>2 Q. Okay. How would you characterize that?</p> <p>3 A. Our system is designed --</p> <p>4 [REDACTED]</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
<p style="text-align: right;">Page 175</p> <p>1 that was different.</p> <p>2 Q. Is there any --</p> <p>3 A. The audit was orders.</p> <p>4 Q. Sorry.</p> <p>5 Is there any automation of this process</p> <p>6 now?</p> <p>7 A. No, other than periodic reviews.</p> <p>8 Q. Okay. The next section, Section (e) talks</p> <p>9 about stopping shipments of orders of interest. It</p> <p>10 says:</p> <p>11 "If an order meets or exceeds a</p> <p>12 distributor's threshold, as defined in the monitoring</p> <p>13 system, or otherwise characterized by the distributor</p> <p>14 as an order of interest, the distributor should not</p> <p>15 ship to the customer, in fulfillment of that order,</p> <p>16 any units of the specific drug code product as to</p> <p>17 which the order met or exceeded a threshold or as to</p> <p>18 which the order was otherwise characterized as an</p> <p>19 order of interest."</p> <p>20 It is a rather long sentence that</p> <p>21 basically says you shouldn't ship controlleds to</p> <p>22 people that are over their threshold.</p> <p>23 Is that true?</p> <p>24 A. Not exactly how you just characterized</p>	<p style="text-align: right;">Page 177</p> <p>1 [REDACTED]</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17 Q. Okay.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>

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1 schedule -- you know, it could be -- it depends.
 2 Our -- you know, there's different phases of our
 3 investigation.
 4 If we were going to do a site visit, the
 5 sales rep would be the -- the person that would
 6 communicate that and say that, you know, our
 7 compliance staff is going to come out and do a -- a
 8 site visit with you and schedule that because we
 9 don't -- we don't want to do -- we are not going to
 10 fly across the country and the pharmacy owner or pick
 11 is not there. We want the people that are decision
 12 makers to be there so we can discuss the concerns we
 13 have.

14 Q. Has H.D. Smith ever considered that the
 15 salesperson might be in a conflict with the compliance
 16 function in the example that you just discussed?

17 MR. PADGETT: Object to form.

18 BY MR. YOUNG:

19 Q. In other words, the salesperson is
 20 motivated to have the sale go through and the
 21 compliance person is motivated to make sure that the
 22 wrong type of sale does not go through and those two
 23 things are in conflict with each other?

24 A. The sales rep's main job is to sell, but

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11 Q. That's never happened?
 12 A. No, not to my knowledge.
 13 Q. Do you know if salespeople would have had
 14 such a conversation?
 15 A. I -- I cannot say that for sure.
 16 Q. Do you know the extent of communications
 17 that the sales staff has with pharmacies when they are
 18 subject to investigations for hitting their
 19 thresholds?
 20 A. They have communication with them because
 21 we allow them to communicate what we are doing with
 22 their account. You know, they'll communicate to the
 23 pharmacy that, Hey, you are blocked from oxycodone and
 24 we need to get a dispensing report and we are going to

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1 we want to sell to good customers, good, compliant,
 2 legitimate customers. You know, they have no say-so
 3 in compliance decisions.

4 Q. Okay.

5 A. All we are using them for is a conduit for
 6 the discussion.

7 Q. I want to show you Euson Deposition
 8 Exhibit 17, which is essentially a collection of
 9 documents. It's -- it's two e-mails, a printout
 10 and -- a printout of, like, a ledger and then a
 11 printout of a spreadsheet, I think. I'll give you a
 12 minute to look at that.

13 A. I can hardly read that.

14 Q. You can't read it? I had -- we can -- I
 15 had that same problem. We can only copy what we
 16 receive.

17 Is that better?

18 A. Yeah. The focus is -- that -- that's
 19 fine. It's the copy, I think.

20 Q. Are you able to read that?

21 A. I -- I can read it.

22 Q. Okay.

23 A. It will just take me a second.

24 Q. Sure.

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<p style="text-align: right;">Page 182</p> <p>1 A. Do you want me to read further? I can see 2 that. 3 Q. Oh, no. Just familiarize yourself with 4 the first page. We'll just focus on that first and 5 then we can talk about the rest of it. 6 Have you seen this document before? 7 A. I don't recall. It was just -- I'm sure I 8 have, but I don't recall seeing it lately. 9 Q. So this purports to be an e-mail from 10 Brandon Sail -- Salyer? 11 A. Salyer. 12 Q. Salyer. You're familiar with Brandon? 13 A. Yes. 14 Q. Is he still with the company? 15 A. No. 16 Q. And, I mean, obviously the document speaks 17 for itself, but -- but Brandon is a sales 18 representative in the -- in the Louisville 19 distribution center, is that right? 20 A. Yes, he was. 21 Q. And this is to P.J. Little who I think you 22 testified earlier was your colleague in the compliance 23 division? 24 A. Right.</p>	<p style="text-align: right;">Page 184</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> 
<p style="text-align: right;">Page 183</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> 	<p style="text-align: right;">Page 185</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 Q. Okay. 13 A. I'm not sure what order those e-mails were 14 in. 15 Q. Yep, and there -- I believe -- 16 MR. PADGETT: Is there a date? 17 MR. YOUNG: Yes, I believe it is cut off. These 18 were produced by you all. 19 BY THE WITNESS: 20 A. It sounds like the first e-mail -- 21 BY MR. YOUNG: 22 Q. Yeah. 23 A. -- was the history she was asking for. 24 Q. So the next page is a printout on</p> 

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1 H.D. Smith letterhead. Do you -- do you recognize 2 this type of -- and it is obviously just an excerpt 3 from -- from some printout, but do you recognize this 4 type of document? 5 A. Yes. We called this our comment sheet. 6 Q. Okay. 7 A. It is basically a -- a chronological 8 record of any changes that we would have made with 9 different accounts. 10 Q. And what is the date of this entry? 11 A. April 22nd, 2009. 12 Q. And LAK, does that signify Lori Kirbach? 13 A. Yes. 14 15 16 17 18 19 20 21 22 23 24	1 2 3 4 5 6 7 8 9 10 11 Q. And as far as the reports or records of 12 H.D. Smith that would serve as evidence of these 13 examples, other than the due diligence files, is there 14 some type of report or repository or database that we 15 could look to to find instances where sales reached 16 out to compliance and compliance increased URLs? 17 A. It was communication through e-mails. 18 Q. It would all be e-mail, okay. 19 20 21 22 23 Q. Sure. I just figured it was worth a shot, 24 if they were on your radar or not.

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1 the DEA and HDMA, is that correct?
 2 A. Not HDMA. This was the meeting we had
 3 with Kyle Wright and Mike Mapes at DEA headquarters in
 4 October --
 5 Q. Okay.
 6 A. -- 2007.
 7 Q. Did you attend a HDMA meeting on
 8 October 16th and 17th of 2007?
 9 A. I -- I don't know.
 10 Q. Okay. Let me -- let me go back one -- one
 11 exhibit to Exhibit 18. I will show you what is
 12 labeled a Draft Summary of HDMA DEA Meeting October 16
 13 and 17. See if that refreshes your recollection.
 14 And I'd -- I'd specifically direct your
 15 attention to the last page of this exhibit, that lists
 16 the attendees, under "HDMA Members in Person" you are
 17 the third name.
 18 A. Then I guess I was.
 19 Q. Okay. Fair enough.
 20 So you attended this meeting of the HDMA
 21 and DEA. You -- you don't recall the meeting
 22 specifically?
 23 A. Not specifically.
 24 Q. Okay.

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17 Q. Okay. That's fair enough.
 18 I want to switch to Euson Deposition
 19 Exhibit 19, which is actually a letter from you,
 20 October 22nd, 2007, to Kyle Wright. I'll give you a
 21 minute to take a look at it.
 22 A. I'm familiar with it.
 23 Q. Okay.
 24 You wrote this letter after meeting with

1 A. I do remember a meeting with Kyle Wright
 2 there, so it may have been this one.
 3 Q. And subsequent to this, I'll just refer
 4 back to Exhibit 19, which is the -- your letter to
 5 Kyle Wright, so you sent Kyle Wright a piece of
 6 correspondence, a letter, and it begins with: "Thank
 7 you for taking the time to meet with Larry Mackey,
 8 Brian Landry and me at DEA headquarters" and you are
 9 following up on issues.
 10 There is a -- a highlighted portion on
 11 this first page. Can you just read that sentence for
 12 us?
 13 A. "In addition, our division management will
 14 be instructed to review any orders they deem
 15 suspicious and stop shipment until investigated."
 16 Q. And I -- you know, I -- I can't tell from
 17 that sentence, in contrast to your prior testimony,
 18 was that the practice prior to sending this letter or
 19 was this a new development?
 20 A. Rephrase that.
 21 Q. Prior to writing this letter or prior to
 22 meeting with Kyle Wright, was division management
 23 instructed to review any order they deem suspicious
 24 and stop shipment until investigated?

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<p style="text-align: center;">Page 194</p> <p>1 A. Well, as we've discussed before, the -- 2 the practice was to look at orders at the end of the 3 month. This was in the transition phase of -- of, you 4 know, when we are going from the manual system to the 5 automated system and it was just a reminder to our 6 division management that, you know, that we are 7 developing this system and that this is -- you know, 8 that -- that basically that's going to be the practice 9 going forward.</p> <p>10 Q. Did -- did Kyle Wright tell you during 11 your meetings with him that the way you were doing 12 things prior to CSOMP were insufficient?</p> <p>13 A. Not that I recall.</p> <p>14 Q. So what was the impetus to make the 15 change?</p> <p>16 A. As I said, we were already exploring an 17 automated system in 2006 and 2007 to improve our 18 processes and when we met with DEA in October, they 19 asked us if we would put an automated system together. 20 And I told them that we had been exploring it but that 21 we would make it our priority to put an automated 22 system together and -- and put it in practice by 23 spring of 2008.</p> <p>24 Q. Okay. You also in this letter describe</p>	<p style="text-align: center;">Page 196</p> <p>1 sending letters to DEA saying this is what you are 2 going to -- this is what we are going to do and if you 3 don't hear -- and if we don't hear different we 4 consider that a yes. So that was the premise that I 5 operated under.</p> <p>6 So when I sent these -- these forms to 7 them to take a look at, the same way when I informed 8 them along the way on how we were developing our 9 system, my expectation is if he had an issue with 10 something, he would bring it to my attention, not that 11 he was going to endorse what we were doing, but if 12 there was something that we either misunderstood or 13 there was something we were doing wrong, my 14 expectation is that he would let us know that, Hey, 15 that's not right.</p> <p>16 Q. Okay. You close your letter with a 17 commitment to implement all reasonable controls to 18 prevent diversion of controlled substances for illicit 19 use.</p> <p>20 Did you have something specific in mind 21 when you -- when you referred to implementing all 22 reasonable controls? Or are you just talking about 23 CSOMP or something more than that?</p> <p>24 A. No. Just our -- our everyday commitment</p>
<p style="text-align: center;">Page 195</p> <p>1 new customer due diligence forms and I think you 2 previously talked about this in answering another 3 question.</p> <p>4 But who developed these forms, was it -- 5 was it just you or was there a committee of people?</p> <p>6 A. It -- it was just me but it was with 7 reference to other materials, materials that DEA had 8 given me, materials that I had garnered from HDMA. 9 So, you know, all of the wholesalers questionnaires 10 were a little bit different, but basically on the same 11 theme.</p> <p>12 Q. You say in this letter that you are going 13 to send these examples of the new forms to Kyle for a 14 review.</p> <p>15 Does -- was it your expectation that he 16 was going to comment or edit these forms for you?</p> <p>17 A. No. Historically in communications with 18 DEA they give little to no guidance and it had been my 19 practice to, when I had discussed something with DEA, 20 whether it was a diversion investigator, Kyle Wright, 21 I would then put an e-mail together, send it to them 22 saying, This is what I understand our discussion was. 23 Usually I'd hear nothing, and to me nothing was good.</p> <p>24 There was a practice at one time about</p>	<p style="text-align: center;">Page 197</p> <p>1 to -- to, you know, implement controls to -- to -- 2 against diversion, not only CSOMP.</p> <p>3 Q. Did you ever hear back from Kyle about the 4 customer due diligence forms? Do you know, did he 5 ever, like, say, Hey, good job or --</p> <p>6 A. I don't think so, no.</p> <p>7 Q. Okay.</p> <p>8 Okay. Let's see. You -- I'm going to 9 turn to Euson Deposition Exhibit 23, which is an 10 e-mail, handwritten like a journal entry and, of 11 course, a redacted handwritten entry, I'm hoping that 12 maybe you'll be able to read. It is also pretty 13 difficult to -- to read.</p> <p>14 Once you are ready to talk about that, let 15 me know.</p> <p>16 A. Is there something redacted out of that 17 e-mail after "order" and the -- it is a little hard to 18 follow.</p> <p>19 Q. Which one? After "order" there is, like, 20 a space and a period?</p> <p>21 A. Yeah, and then it goes into a monitoring 22 program. I guess we don't know what that says.</p> <p>23 Q. Yeah, I don't know. This is how we 24 received it, so.</p>

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<p style="text-align: center;">Page 198</p> <p>1 A. Okay.</p> <p>2 Q. So this e-mail is from you dated July 9th,</p> <p>3 2007, to Scott Garriott. I think you -- you</p> <p>4 previously testified that Scott was a DEA employee,</p> <p>5 right?</p> <p>6 A. Diversion investigator in Springfield,</p> <p>7 Illinois.</p> <p>8 Q. And what was your purpose in sending this</p> <p>9 e-mail to Scott?</p> <p>10 A. Can I finish reading it?</p> <p>11 Q. Sure.</p> <p>12 A. My purpose was just to let him know that</p> <p>13 we were working on a -- on an automated system. It</p> <p>14 did not go as scheduled in this e-mail. We had -- we</p> <p>15 had issues in the initial development of the system to</p> <p>16 make it work the way we wanted it to work. So that --</p> <p>17 that highlighted area "beginning Ju--" -- "July 1"</p> <p>18 never occurred.</p> <p>19 Q. So I -- I -- I don't want to testify for</p> <p>20 you, but I take it from this e-mail that that section</p> <p>21 is actually part of what Amerisource sent in its</p> <p>22 e-mail.</p> <p>23 Is -- is that your recollection as well?</p> <p>24 Because your e-mail begins with: "This is a</p>	<p style="text-align: center;">Page 200</p> <p>1 [REDACTED]</p> <p>2</p> <p>3</p> <p>4 Q. Okay. There is some handwritten notes on</p> <p>5 the bottom of this e-mail. It says: "Verbal</p> <p>6 response: Format is not required but Smith should</p> <p>7 give it serious consideration."</p> <p>8 Do you know whose handwriting that is?</p> <p>9 A. I don't.</p> <p>10 Q. I'm going to turn to Page 2 and ask if you</p> <p>11 can identify, is that your handwriting?</p> <p>12 A. No.</p> <p>13 Q. Do you recognize that handwriting? Would</p> <p>14 you -- have you seen this document before or that</p> <p>15 entry?</p> <p>16 A. I do not know whose handwriting that is.</p> <p>17 Q. Okay.</p> <p>18 A. I can only make an assumption that it</p> <p>19 might be Garriott's.</p> <p>20 Q. Okay. I'm not sure how we obtained it</p> <p>21 from you all.</p> <p>22 Okay. That -- that's all from that</p> <p>23 exhibit.</p> <p>24 I want to turn to -- and I'm going to give</p>
<p style="text-align: center;">Page 199</p> <p>1 communication that Amerisource sent out to their</p> <p>2 customers. We are close to implementing our system</p> <p>3 but may need to tweak it based on the below."</p> <p>4 And that's what I wanted to understand was</p> <p>5 whether "all of the below" was the Amerisource</p> <p>6 content? I think that -- and that may also explain</p> <p>7 the cutting and pasting or the redaction you were</p> <p>8 asking about.</p> <p>9 MR. YINGLING: Objection to form.</p> <p>10 BY THE WITNESS:</p> <p>11 A. Yeah, I'm speculating that it is.</p> <p>12 BY MR. YOUNG:</p> <p>13 Q. Okay.</p> <p>14 A. Based on the corporate security and</p> <p>15 regulatory affairs stuff.</p> <p>16 [REDACTED]</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: center;">Page 201</p> <p>1 you this one, it's -- because it's got the flags on</p> <p>2 it.</p> <p>3 MS. COOK: Okay.</p> <p>4 MR. YOUNG: And you look -- we'll give them that</p> <p>5 one, that version.</p> <p>6 BY MR. YOUNG:</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>

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BY THE WITNESS:

A. It would -- it would depict my --

BY MR. YOUNG:

Q. Interpretation?

A. -- opinion -- interpretation.

Q. So, I think it's 4 --

MR. PADGETT: You should have been a lawyer.

THE WITNESS: Before we get into that --

MR. YOUNG: Yeah.

THE WITNESS: -- can we take a break?

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1 going about it, frankly.

2 There is reference made in this document
3 and other documents, and I think your testimony today
4 included this phrase "know your customer."

5 Do you know the origin of the "know your
6 customer" phrase?

7 A. I'm not exactly sure. I think it is in
8 the Chemical Handlers book.

9 Q. But --

10 A. There may be other reference to it. It's
11 kind of a, I don't know, it's -- it's a -- it is -- it
12 is something that's kind of the industry DEA expects
13 you to know your customer.

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1 MR. YOUNG: Oh, sure, by all means. Any time
2 you feel the urge, let us know.

3 MR. PADGETT: It is almost an hour 15.

4 MR. YOUNG: Can we go off the record.

5 THE VIDEOGRAPHER: We are off the record at
6 2:25 p.m.

7 (WHEREUPON, a recess was had
8 from 2:25 to 2:31 p.m.)

9 THE VIDEOGRAPHER: We are back on the record at
10 2:31 p.m.

11 BY MR. YOUNG:

12 Q. When we left off and took a break, we were
13 talking about the brief overview that you had drafted.
14 You've today looked at it a little bit, but you are
15 the author of it.

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24 Q. Okay. That's -- that's a better way of

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7 BY MR. YOUNG:

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<p style="text-align: right;">Page 206</p> <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 Q. Is H.D. Smith aware of instances in which</p> <p>5 a pharmacy ordered and received more controlled</p> <p>6 substances than it should have been allowed to?</p> <p>7 MR. PADGETT: Object to form.</p> <p>8 BY THE WITNESS:</p> <p>9 A. You'd have to define that.</p> <p>10 BY MR. YOUNG:</p> <p>11 Q. Is H.D. Smith aware of instances in which</p> <p>12 any pharmacy in the country received an order of</p> <p>13 controlled substances that should -- it should not</p> <p>14 have shipped?</p> <p>15 A. If we identified orders that were</p> <p>16 suspicious, we would not have shipped them.</p> <p>17 Q. And I want to clarify. This is for the</p> <p>18 duration of H.D. Smith including before your tenure</p> <p>19 whether or not any customer received an order from</p> <p>20 H.D. Smith that should not have shipped?</p> <p>21 MR. PADGETT: Objection; form, scope.</p> <p>22 BY THE WITNESS:</p> <p>23 A. You'd have to identify the order and --</p> <p>24 and give me more -- more details on that order.</p>	<p style="text-align: right;">Page 208</p> <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p>
<p style="text-align: right;">Page 207</p> <p>1 BY MR. YOUNG:</p> <p>2 Q. But you as the chief of compliance have</p> <p>3 not identified any such order?</p> <p>4 A. No.</p> <p>5 Q. I'm going to show you Exhibit 25. We</p> <p>6 won't spend a lot of time on it. It's --</p> <p>7 A. Are we done with that?</p> <p>8 Q. Oh, yeah, we are done with that one.</p> <p>9 That is the -- let me take that one back.</p> <p>10 That's my copy.</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p>	<p style="text-align: right;">Page 209</p> <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p>

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<p>Page 210</p> <p>1 [REDACTED] 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p>Q. Okay. And the current authorized users to</p>	<p>Page 212</p> <p>1 described, which is different than when you first 2 started with H.D. Smith. 3 Is that, that assemblage of people, is 4 that the largest the compliance department has been or 5 was it larger? 6 A. I still at the time had three compliance 7 managers in the field. I had a licensing coordinator. 8 I had a couple of people at Valley that reported to 9 me. I think I might have -- there may have been ten 10 or eleven total in the compliance department. 11 Q. Was there any point in time in which you 12 asked for additional staff in compliance but were not 13 given authority to hire additional staff? 14 A. No. 15 Q. During your tenure in the compliance 16 department, is it your opinion that it was adequately 17 staffed at all times? 18 A. I believe so. 19 Q. I'm going to show you what was marked as 20 [REDACTED] 21 22 23 24</p>
<p>Page 211</p> <p>1 do that are who? 2 A. Currently, I have one compliance 3 coordinator that is still working at H.D. Smith. Her. 4 Probably P.J. 5 Q. Is -- is that because of the 6 acquisition -- 7 A. Yes. 8 Q. -- by Amerisource? 9 A. Yes. 10 Q. Okay. 11 A. There has been -- there has been 12 transitions into other roles. 13 Q. I should have asked. Prior to the 14 acquisition by Amerisource, who had the authority to 15 increase URLs at H.D. Smith? 16 A. It would have been P.J. VanDermeersch, 17 she's the -- she would have been the compliance 18 manager, she was over licensing but she had 19 overreaching duties and responsibilities. It would 20 have been Kyle Rieger, who was our compliance manager, 21 and then Tyler Walsh, who would have been our 22 compliance analyst, and Christina Wools, who is our 23 compliance coordinator. 24 Q. That's quite a few people that you've</p>	<p>Page 213</p> <p>1 [REDACTED] 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>

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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Page 216 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24
Page 215 1 2 3 Q. Okay. I was just curious about when we 4 dig into the data how we would be able to identify 5 those, but I'm not sure that's possible. 6 Okay. That's all for that exhibit. 7 The next exhibit is No. 27 which is a -- a 8 thread, I guess, or a collection of e-mails. It is 9 also somewhat small, hard to read. Apologies in 10 advance. 11 A. This one is easier. 12 Q. Okay. So this is a thread, it includes 13 you, the -- the top entry is actually to you 14 from Dan Howard. It designates Dan Howard as the 15 manager of operations in Pompano Beach. 16 Is that still the case, is Dan with the 17 company still? 18 A. He has transitioned to MWI, a division of 19 AmerisourceBergen. 20 Q. Okay. So I want to just talk a little bit 21 about this thread. 22 23 24	Page 217 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24

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<p style="text-align: right;">Page 218</p> <p>1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED]</p> <p>5 Q. Okay. So would it be -- this be an 6 unusual situation?</p> <p>7 MR. PADGETT: Object to form.</p> <p>8 BY THE WITNESS:</p> <p>9 A. I -- I don't know. I don't know what this 10 is. I would have to get more information around this.</p> <p>11 BY MR. YOUNG:</p> <p>12 Q. Would it be unusual for an operations 13 manager to be able to release held orders?</p> <p>14 A. They could have the ability, but it would 15 either be under the -- the restrictions that we put on 16 them that were in the previous policy or they may have 17 con -- they may have been in contact with Lori or 18 myself. I just don't recall, but they are not going 19 to -- the divisions did not just release orders.</p> <p>20 Q. Evidence of that would be found in the due 21 diligence file for these customers?</p> <p>22 A. It should be.</p> <p>23 Q. Okay. The next one is Exhibit 28. This 24 is -- again, is a little easier to read, a shorter</p>	<p style="text-align: right;">Page 220</p> <p>1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED]</p> <p>5 Q. Do you recall this particular thread?</p> <p>6 A. I don't recall the thread, I recall the 7 pharmacy.</p> <p>8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED] 23 [REDACTED] 24 [REDACTED]</p>
<p style="text-align: right;">Page 219</p> <p>1 e-mail. This is actually dated the same date that the 2 CSOMP divisional policy was created.</p> <p>3 And I guess it probably makes sense to 4 start with the initial communication in the thread, 5 the -- the actual original -- what's going on here -- 6 the original message was not included here. I don't</p> <p>7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED] 23 [REDACTED] 24 [REDACTED]</p>	<p style="text-align: right;">Page 221</p> <p>1 [REDACTED] 2 [REDACTED] 3 [REDACTED]</p> <p>4 Q. So at the very top -- well -- well, first, 5 there is a -- a response from Bryce to your e-mail 6 where he says: "Can we suggest to the customer to 7 call the DEA diversion for their questions?"</p> <p>8 And I, you know, we are -- we are at a 9 disadvantage because we don't have the original e-mail 10 that they are referring to here, but your response to 11 that suggestion is at the top. And it's -- can you 12 read that for us? It begins with, "No I wouldn't."</p> <p>13 A. Can I read the rest of this first?</p> <p>14 Q. Sure.</p> <p>15 A. Okay. What's your question?</p> <p>16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED] 23 [REDACTED] 24 [REDACTED]</p>

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Q. Do you share your information about pharmacies that you've identified as suspicious with your other distributor companies, with competitors?

A. With DEA.

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Q. Does HDMA have any type of information sharing between and among distributors about suspect or problem pharmacies?

A. No.

Q. And you've never had -- you in your role

Page 227

1 Q. Just with DEA. Do you know --

2 A. Any time that we block a -- a pharmacy
3 from controls or we exit the company -- the pharmacy
4 altogether based on compliance concerns or if we've
5 identified doctors in our -- in our research, we
6 notify DEA of that.

7 Q. When you take on a new customer, are you
8 able to discern whether or not that customer was
9 ordering too many controlleds from its prior
10 distributor?

11 A. We don't have any way of knowing that.

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1 as a chief of compliance for H.D. Smith have never had
2 communications with any other distributor about
3 problem pharmacies?

4 A. Now that we've been acquired by
5 AmerisourceBergen, we will share a list of customers
6 that we have discontinued selling controlled
7 substances to.

8 Q. With Amerisource?

9 A. Yes.

10 Q. But not with other distributors?

11 A. No.

12 Q. Do you think that's something that -- that
13 distributors should be able to do?

14 A. I would welcome any additional cooperation
15 from DEA with the distributors to assist us in this.

16 Q. All right. I'm going to turn to -- one
17 moment. This is Euson Deposition Exhibit 30. I'll
18 give you this one. That's fine. Let me give you this
19 one.

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Do you see that?

A. Yes.
Q. Can you read that for us?

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Page 235  1 2 3 4 5 6 7 Q. Okay. 8 A. When I came back in April 2009 after 9 getting up to speed with policies and -- and 10 procedures, we continued to improve our processes. 11 Q. Okay. 12 A. But all of these things that are on these 13 bullet points are things that we do on a regular 14 basis.  15 16 17 18 19 20 21 22 23 24	Page 237  1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24

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<p style="text-align: right;">Page 238</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p>Q. Okay. I want to show you, this is Exhibit 33.</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p>And so that's what a lot of this pertains to. Q. Okay. I want to understand a little bit about that decision. H.D. Smith decided that it should discontinue oxycodone sales into Florida of its own accord? A. Yes. Q. Did the DEA have any influence over that decision? A. No, only through discussions I had with DEA about the issues with -- with oxycodone and with us being in South Florida, which was kind of the epicenter of that issue, that was something that -- that Chris Smith decided that H.D. Smith should do and we did it on our own accord. Q. Okay. I want to show you Euson Exhibit 35. I'm going to come back -- well, we don't need to come back to that one, but this is a letter, I believe, from you to Leonard Levin at the DEA dated April 27th, 2010. So, do you recall this letter? A. Yes. I'd have to reread it all -- Q. Sure. A. -- if you want me to answer about it.</p>
<p style="text-align: right;">Page 239</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p>And this may be something you referred to earlier. This is -- it looks like a PowerPoint. Take a look and see if that looks familiar to you? A. It is familiar to me. I'm not sure if I was the one that presented this or not. Q. Okay. Is that somewhat consistent with the compliance training PowerPoint you described earlier? A. Yeah, it's some of the information that's -- that's usually in our -- Q. Okay. And turn to -- yours is flagged. Let's see. Go to Page 4. It says, "Recent DEA Actions. H.D. Smith response in Florida Division." What is that referring to? Do you recall? A. In light of the oxycodone issues that were occurring in Florida, and specifically South Florida where we had a facility in Pompano Beach, we had been in contact -- you know, constant contact, actually, with -- with DEA personnel in Florida regarding the -- the issues of oxycodone. And in response to some discussions that I had with DEA, Chris Smith made a decision to halt all oxycodone sales into Florida until every single account of ours could be visited.</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p>Q. And we don't need to do that. I'm just going to address some -- some particular points. But this references a meeting. And it says: "This follows our meeting on Friday, April 23rd," which would have been the prior week of the -- of this letter. And it says in the highlighted portion, can you read that for us: "However"? A. "However, given the tone and rhetoric of your statements during Friday's meeting, we are also concerned that the company is at risk for regulatory action by the DEA if it does not reduce sales of certain drugs to some of its customers in Florida. Accordingly, this letter is to inform you that H.D. Smith will immediately reduce sales of oxycodone and other controlled substances, as appropriate, to the customers you identified during the meeting on Friday." Q. Okay. So there was a meeting, I take it, between you and Mr. Levin on April 23rd, 2010. Do you recall that? A. Um-hum, yes. Q. At that meeting, just based on your letter here, it appears that Mr. Levin identified for you and for H.D. Smith particular pharmacy customers that it</p>

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<p style="text-align: center;">Page 242</p> <p>1 was asking you to reduce sales of oxycodone to. 2 Is that correct? 3 A. We had a meeting called by DEA. Leonard 4 Levin was in headquarters. Also Susan Langston, who 5 at the time I think was the group supervisor in the 6 Miami district, field office. And I think Gayle Lane 7 who was a -- a division -- diversion investigator at 8 the time had a meeting and it was -- it was -- there 9 was a discussion about the issues with the oxycodone 10 in -- in Florida. And, you know, they -- it was a -- 11 it was a discussion about customers of ours and 12 customers in general and -- and the oxycodone issues 13 in general. 14 Q. The -- the sentence that you read before 15 references tone and rhetoric of statements made at the 16 meeting by the DEA. 17 Do you recall specifically either the tone 18 or the rhetoric that the DEA had at that meeting? 19 A. It -- it wasn't threatening, but it was to 20 the point. 21 Q. A decision was made after that meeting, 22 which is what this letter is memorializing, to 23 immediately reduce sales of oxycodone and other 24 controlleds to the customers DEA identified.</p>	<p style="text-align: center;">Page 244</p> <p>1 do you recall whether or not H.D. Smith had conducted 2 a Level II investigations of any of those customers? 3 A. At the time? 4 Q. Yes. 5 A. I -- I don't know. 6 Q. Do you recall in the aftermath of this 7 meeting evaluating the specifically identified 8 customers identified by the DEA? 9 A. I can only speculate that we did. I would 10 have to check our due diligence files. 11 Q. Do you know if there was a particular 12 report that would have been prepared or a memorandum 13 that would have been prepared reflecting that 14 evaluation of these specifically identified customers 15 in Florida? 16 A. It would be in our due diligence files. 17 Q. Just the individual due diligence file of 18 that customer but not a more general document? 19 A. I don't know about those specific 20 pharmacies. When we -- when we decided to halt all 21 sales of oxycodone in Florida, we had kept a -- kind 22 of a running spreadsheet on what our due diligence 23 efforts are because we had also brought in some 24 outside consultants to do site visits. We were, you</p>
<p style="text-align: center;">Page 243</p> <p>1 You mentioned previously that Chris Smith 2 made a decision to no longer sell oxycodone in Florida 3 at all. 4 Did the April 23rd meeting with the DEA 5 have any influence on that decision? 6 A. Just they did identify a few accounts of 7 ours that they had issues with and we needed to do 8 more due diligence on. There were already accounts in 9 Florida that we had been shutting down due to 10 oxycodone sales. And then after that, not only 11 through this letter with -- with Leonard 12 Levin, I was also in constant contact with Susan 13 Langston in -- in the Miami field office and we had 14 had discussions about the oxycodone issues in general, 15 and it was sometime after this, it wasn't as a direct 16 result of this meeting, but it was sometime after this 17 that -- that Chris Smith decided that we were going to 18 halt all sales of oxycodone until we could get into 19 every single customer and do complete new due 20 diligence on it, on every customer that we had in 21 Florida. 22 Q. Do you recall whether or not the customers 23 that the DEA identified at that April 23rd meeting 24 which you subsequently reduced their oxycodone supply,</p>	<p style="text-align: center;">Page 245</p> <p>1 know, trying to get access to dispensing reports. You 2 know, we were doing our own visits. So there was a 3 lot of moving parts and so we tried to keep it 4 organized with a -- with a spreadsheet and we had 5 weekly meetings to discuss the accounts with the 6 division and what -- what our actions were. 7 Q. Do you know whether or not -- or do you 8 recall whether or not the DEA opined that your 9 policies and procedures or systems to identify 10 suspicious drug orders were insufficient at that 11 meeting? 12 A. They did not, that I recall. 13 Q. Did they make particular feedback to you 14 about your policies, procedures or systems to identify 15 suspicious orders at that meeting? 16 A. Not that I recall. 17 Q. Can you read for me the sentence which 18 immediately follows the highlighted portion that 19 begins with: "In light of"?</p> <p>20 A. Wait. Where are you at? 21 Q. The first highlighted portion, it sort of 22 ends with "and will continue to review orders of other 23 customers." The next sentence there, it is not 24 highlighted, it says: "In light of the meeting on</p>

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<p style="text-align: center;">Page 246</p> <p>1 Friday."</p> <p>2 A. "In light of the meeting on Friday,</p> <p>3 H.D. Smith will take and apply the DEA's fade" --</p> <p>4 "feedback to the company's overall policies and</p> <p>5 procedures for identifying suspicious drug orders."</p> <p>6 Q. So reading that, does that refresh your</p> <p>7 recollection about any feedback that the DEA may have</p> <p>8 given you at that meeting about your policies and</p> <p>9 procedures?</p> <p>10 A. I don't recall, but I also -- they would</p> <p>11 not have -- they wouldn't even know what our policies</p> <p>12 and procedures were.</p> <p>13 Q. Do you know if your policies and</p> <p>14 procedures and systems, including the CSOMP that were</p> <p>15 in place in April of 2010, identified any of the</p> <p>16 pharmacy customers which were named by the DEA at that</p> <p>17 April 23rd meeting as suspect or suspicious customers</p> <p>18 in terms of their controlled ordering? In other</p> <p>19 words, were they on your radar?</p> <p>20 A. I don't know without looking at that.</p> <p>21 Q. Okay. Can you read the -- the next</p> <p>22 sentence, which is: "We heard"?</p> <p>23 A. "We heard and understood the DEA's concern</p> <p>24 Friday regarding prescribing issues in Florida."</p>	<p style="text-align: center;">Page 248</p> <p>1 We -- we could not go in to a pharmacy and look at</p> <p>2 prescriptions, that's a HIPAA violation.</p> <p>3 Q. Would a DUR report contain the prescriber</p> <p>4 DEA number?</p> <p>5 A. It depended. At this time -- it depends</p> <p>6 on the timing.</p> <p>7 Q. In -- in 2010?</p> <p>8 A. Sometimes a pharmacy could give us that</p> <p>9 information, sometimes it was not easy to discern the</p> <p>10 prescriptions or the combinations. We could get a</p> <p>11 list of doctors that they were filling for, but not</p> <p>12 the detail. Some pharmacies were able to give that to</p> <p>13 us, some only gave us utilization reports that didn't</p> <p>14 have any doctor information on it and we had to ask</p> <p>15 them and hope that they were telling us the truth</p> <p>16 because we didn't have access to those records.</p> <p>17 Once we were a -- you know, able to get</p> <p>18 Pro Compliance reports, that does identify the doctor</p> <p>19 that prescribes by prescription and that de-identifies</p> <p>20 any of the HIPAA information so there is no HIPAA</p> <p>21 violations.</p> <p>22 Q. Were these issues isolated in a particular</p> <p>23 geographic region of Florida or was it just endemic to</p> <p>24 Florida?</p>
<p style="text-align: center;">Page 247</p> <p>1 Q. And -- and you can go ahead and finish it?</p> <p>2 A. "And we at H.D. Smith hope to work in</p> <p>3 collaboration with the DEA to help address the</p> <p>4 issues."</p> <p>5 Q. That seems to be a larger reference than</p> <p>6 just the pharmacy customers the DEA identified</p> <p>7 prescribing issues in Florida.</p> <p>8 Do you know whether or not those concerns</p> <p>9 are what informed Chris Smith's decision to no longer</p> <p>10 sell oxycodone in Florida?</p> <p>11 A. I believe that what they were referencing</p> <p>12 was the issue with pain clinics, the proliferation of</p> <p>13 pain clinics in Florida. We never sold directly to</p> <p>14 pain clinics, but prescriptions that were written by</p> <p>15 those pain clinic doctors would have filtered out and</p> <p>16 been filled by some of our customers. So -- and the</p> <p>17 reason why we, you know, were insistent on looking at</p> <p>18 prescription data, so that we could identify doctors</p> <p>19 that may have questionable prescribing habits that</p> <p>20 would be filled at our pharmacies.</p> <p>21 Q. You had access to the data to be able to</p> <p>22 identify the providers that were writing the</p> <p>23 prescriptions?</p> <p>24 A. Sometimes we did, sometimes we didn't.</p>	<p style="text-align: center;">Page 249</p> <p>1 A. Population centers. South Florida mainly,</p> <p>2 but over in Tampa, Orlando, Jacksonville.</p> <p>3 MR. PADGETT: The big cities.</p> <p>4 BY MR. YOUNG:</p> <p>5 Q. Okay. One more thing on this one.</p> <p>6 On Page 2, the second -- well, the first</p> <p>7 full paragraph, it begins with: "While H.D. Smith was</p> <p>8 developing and implementing."</p> <p>9 Could you read those two sentences for us?</p> <p>10 A. "While H.D. Smith was developing and</p> <p>11 implementing new and enhanced procedures for SOM,"</p> <p>12 which would be suspicious order monitoring,</p> <p>13 "H.D. Smith provided detailed information to DEA about</p> <p>14 its SOM. The DEA even requested that H.D. Smith enter</p> <p>15 into a memorandum of understanding regarding the SOM."</p> <p>16 Q. Did H.D. Smith ever enter into that</p> <p>17 memorandum un -- of understanding or MOU?</p> <p>18 A. That would be subject to interpretation.</p> <p>19 We had a memorandum of -- of understanding as a result</p> <p>20 of our meeting in October of 2007 where DEA wanted us</p> <p>21 to report suspicious orders to headquarters as opposed</p> <p>22 to the field office as per regulation and then also</p> <p>23 wanted us to report daily sales of all controlled</p> <p>24 substances to DEA on a daily basis. So we complied</p>

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<p style="text-align: center;">Page 250</p> <p>1 with that. We signed the memorandum of understanding. 2 We complied with all aspects of it and DEA never 3 signed it and they lost it.</p> <p>4 Q. Okay. But it was your intention to enter 5 into MOUs?</p> <p>6 A. Yes, operated under the what we thought we 7 were supposed to do under the memorandum of 8 understanding.</p> <p>9 Q. Do you know, was that typical for the DEA 10 to seek MOUs with distributors?</p> <p>11 A. I don't know.</p> <p>12 MR. PADGETT: Object to form.</p> <p>13 BY MR. YOUNG:</p> <p>14 Q. Was it discussed at any of the meetings 15 that -- the larger meetings, not the individual 16 meetings that you had with the DEA, this idea of 17 entering MOUs?</p> <p>18 A. I -- I don't know. I believe there are 19 some other wholesalers that -- that do daily 20 controlled sales to DEA, but I -- I -- I don't know 21 that for sure.</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: center;">Page 252</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
<p style="text-align: center;">Page 251</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: center;">Page 253</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>

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<p style="text-align: right;">Page 254</p> <p>1 formula?</p> <p>2 A. Early on in my tenure there we stopped any</p> <p>3 controlled substances being offered on promotion.</p> <p>4 Q. Okay. So promotion purchases then</p> <p>5 wouldn't impact suspicious order monitoring?</p> <p>6 A. No, because there were no controlled</p> <p>7 substances that were on promotion.</p> <p>8 Q. Yet under the suspicious order monitoring</p> <p>9 slide of this training module it is specifically</p> <p>10 mentioned?</p> <p>11 A. Again, it was probably just a reiteration</p> <p>12 of what we already had in place.</p> <p>13 Q. Okay.</p> <p>14 A. And that there were no promotion purchases</p> <p>15 or, you know, there were no promotional -- controlled</p> <p>16 substances were not included in any promotional-type</p> <p>17 sales events.</p> <p>18 Q. And then finally, it talks about</p> <p>19 assistance of the sales team and ongoing</p> <p>20 communication.</p> <p>21 Do you recall what kind of message you</p> <p>22 gave during this training about ongoing communication</p> <p>23 with pharmacies from the sales team for suspicious</p> <p>24 order monitoring purposes?</p>	<p style="text-align: right;">Page 256</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>Q. Okay. I -- I have the memorandum of agreement that we talked about before and I want to share this with you for one lim- -- very limited purpose. This is Exhibit 36.</p> <p>And is that the document that you recall, the unsigned MOU between H.D. Smith and the DEA?</p>
<p style="text-align: right;">Page 255</p> <p>1 A. I'm going to assume that it's -- it's --</p> <p>2 it's an ongoing communication with the sales staff</p> <p>3 because as I said we used them as our -- to</p> <p>4 communicate with the -- the pharmacies. They had</p> <p>5 the -- the personal relationship with the pharmacies,</p> <p>6 so any time we needed additional information, whether</p> <p>7 it was dispensing information or we were going to do</p> <p>8 an onsite visit, we coordinated that with sales staff.</p> <p>9 Occasionally sales came with us so they could see what</p> <p>10 we were doing when we did our site -- our onsite</p> <p>11 visits, sometimes they didn't, but it was all -- any</p> <p>12 contact with the customers is coordinated through the</p> <p>13 sales rep that was responsible for that account.</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 257</p> <p>1 A. I believe this is.</p> <p>2 Q. And really I just want to use this</p> <p>3 document to refresh your recollection about the timing</p> <p>4 of the implementation of the CSOMP program.</p> <p>5 On the last page there is a reference to</p> <p>6 what I think are your divisions or distribution</p> <p>7 locations. It is called Exhibit 1. And it has dates</p> <p>8 next to them.</p> <p>9 Is that -- well, let me ask you this way:</p> <p>10 What do these locations and dates represent to you?</p> <p>11 A. Well, it is not all of our distribution</p> <p>12 centers, so I'm not exactly sure, but I -- if -- if I</p> <p>13 could compare this with our documents, I would assume</p> <p>14 that this is when we rolled out CSOMP to our -- these</p> <p>15 divisions, but there were -- there are more divisions,</p> <p>16 so I don't know.</p> <p>17 Q. Sure.</p> <p>18 But I guess at the time that this document</p> <p>19 was created, this was the -- the state of affairs?</p> <p>20 MR. PADGETT: Object to form.</p> <p>21 BY THE WITNESS:</p> <p>22 A. I can only assume, because it's not a</p> <p>23 complete list, that this is the timeline that we</p> <p>24 reported to DEA that we would roll out our CSOMP</p>

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<p style="text-align: center;">Page 258</p> <p>1 system to the various divisions. 2 BY MR. YOUNG: 3 Q. Okay. Okay. Thank you. 4 We are getting there. Are you okay as far 5 as -- everyone at the end? 6 A. I'm fine. 7 Q. Bladders are nice and dry. 8 This next document, which is Exhibit 37, 9 it is a little lengthier, and let's give him that 10 version. I want to use this one. 11 So this, again, may be a document that you 12 have never seen, but that nonetheless has been 13 provided to us, which is a report of investigation by 14 the DEA. 15 Have you ever seen that document? 16 A. I think I've -- it -- I think this -- I've 17 seen this in -- in connection with SafeScript cases. 18 Q. Okay. I want to direct your attention to 19 Page 13 of this document regarding ARCOS reporting. 20 A. I think there were numbers somewhere. Oh. 21 MR. PADGETT: Page 13 of 24? 22 MR. YOUNG: I believe so. That's what my notes 23 reflect. 24 MS. COOK: HDS_Euson_00165 -- 166.</p>	<p style="text-align: center;">Page 260</p> <p>1 in their NDC files and we report it and they send it 2 back as an error. There is a -- it -- it's a -- we 3 report monthly for all of our DCs and there is 4 always -- I don't want to say always, but it is not 5 uncommon to have errors in ARCOS reporting. 6 Q. But in your role as chief of compliance 7 during your tenure, have you uncovered more than a 8 one-off type ARCOS reporting problem? 9 A. No. 10 Q. So the data that the DEA has in its ARCOS 11 database regarding H.D. Smith transactions would be 12 accurate aside from a handful of errors you described? 13 A. I can't speak to the accuracy of DEA 14 records. 15 Q. The -- the data that you reported to the 16 DEA in the ARCOS data stream, upstream to the DEA, 17 that would be accurate for the most part? 18 A. To the best of my knowledge. 19 Q. The -- this document also references, I 20 think it's -- I'll find it in a sec -- oh, here it is. 21 On Page 4 of this document, it references DEA reg -- 22 oh, wait, I'm sorry. That's not correct. I'm looking 23 for the section that has the 12 vendors that were no 24 longer -- this right here.</p>
<p style="text-align: center;">Page 259</p> <p>1 MR. YOUNG: Ah, there we are, yes. 2 MR. MARTINEZ: Bates No. 166. 3 BY MR. YOUNG: 4 Q. So I'm sorry. It's Page 14 of 24, and 5 it's Section H, ARCOS Reporting. This report 6 references errors in H.D. Smith's reporting of its 7 ARCOS data to the DEA. 8 Are you familiar with that issue from 9 2006? 10 A. Yes. 11 Q. Do you recall the cause of the problem 12 with the ARCOS reporting in 2006? 13 A. My understanding, it was something to do 14 with an IT glitch in our system that had -- that was 15 corrected, but that was -- I don't know all of the 16 technical parts of it. 17 Q. Sure. 18 Are you familiar with any other glitches 19 in ARCOS reporting from H.D. Smith to the DEA aside 20 from the -- the one referenced here in 2006? 21 A. There is -- there is occasional errors 22 in -- in reporting, and it can be a variety of 23 different reasons for it. It could be, you know, an 24 ND -- a new product that DEA doesn't have a record of</p>	<p style="text-align: center;">Page 261</p> <p>1 We'll find this reference in just a 2 second, but the DEA notified H.D. Smith that 12 of its 3 customers' DEA registration numbers were no longer 4 valid. 5 Is that -- is that typical, obviously we 6 are -- 7 A. Can you show me where -- 8 Q. Yeah, we will, but -- 9 MS. COOK: HDS_EUSON_00167 on the top of the 10 page. 11 MR. YOUNG: Page 15 of 24. 12 BY THE WITNESS: 13 A. Page what? I'm sorry. 14 BY MR. YOUNG: 15 Q. It's in the -- it's in the continuation of 16 that ARCOS section, I believe. It is the last two 17 sentences: 18 "H.D. Smith had also been notified by 19 ARCOS of approximately 12 vendors and a few customers 20 whose DEA registration were being used to report 21 transactions were no longer valid. These problems are 22 in violation of 21 CFR 1304.33." 23 Is that the only instance of this that you 24 are aware of or is this fairly common that people lose</p>

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<p style="text-align: center;">Page 262</p> <p>1 their DEA registration numbers and they don't notify 2 H.D. Smith and so you keep doing business with them? 3 A. I know what the issue with the vendors 4 was. We had, and it was a rela- -- relatively new 5 process of manufacturers using third-party logistics 6 companies back in 2006. So if we had a manufacturer 7 that we were purchasing from, at this point we had 8 their DEA -- their DEA registration on file. We were 9 purchasing from them. They, in turn, instead of 10 shipping it from their DEA-registered site would ship, 11 have it shipped from a third-party logistics company, 12 which could be UPS.</p> <p>13 Q. I see.</p> <p>14 A. And it would come in from UPS, it would 15 have an -- and according to regulation, you have to 16 buy -- or you -- you have to reflect the DEA 17 registration from who you received the product from. 18 So it was inaccurate reflection of -- that we got the 19 product from, say, UPS instead of from Mallinckrodt. 20 I'm just -- I'm throwing those examples out. That was 21 the issue with these.</p> <p>22 Q. No, I understand.</p> <p>23 A. And we did correct it and we made -- we 24 made modifications to our paperwork that our</p>	<p style="text-align: center;">Page 264</p> <p>1 is actually to you.</p> <p>2 A. Right.</p> <p>3 Q. Are you familiar with this document?</p> <p>4 A. Not particularly. I know it's addressed 5 to me and I'm sure that I got it back in 2010. I know 6 Andrew Burchard was a -- at the time we had an 7 internal audit team.</p> <p>8 Q. I direct your attention to the second 9 page of the document. It talks about missing customer 10 due diligence profiles and site visit limitations. 11 And let's just kind of walk through these highlighted 12 portions here. The first one is titled "Missing 13 Customer Due Diligence Profiles."</p> <p>14 Can you read that?</p> <p>15 A. "None of Division 3 Smith Medical Partner 16 profiles have been completed" -- "completed at this 17 time."</p> <p>18 Q. What is Division 3?</p> <p>19 A. Smith Medical Partners was our 20 specialty -- our specialty division that service 21 mainly doctors' offices.</p> <p>22 Q. And the next highlighted section says: 23 "Profiles have not been completed for the Smartsource 24 customers in the CA," I don't know if that's</p>
<p style="text-align: center;">Page 263</p> <p>1 purchasing department used to make sure that we knew 2 where the product was coming from, if it wasn't coming 3 from the -- the actual manufacturer's registered 4 facility but it was coming from a third-party 5 logistics or a contract manufacturer, there is a lot 6 of different variables in there, but...</p> <p>7 And the customers, I don't know the exact 8 issue with that. We do now have a -- a daily feed 9 of -- from a company called NTIS. They work with DEA. 10 And those -- those numbers daily are bounced against 11 our customer lists and if anyone -- if there is an 12 issue, our system automatically stops any sales to 13 that customer.</p> <p>14 Q. When did that contract with NTIS begin?</p> <p>15 A. We've had it for a while. I believe at 16 one point it was a weekly feed and then they offered a 17 daily feed and we went to the daily feed and I don't 18 know if that's why there was a -- a issue with a few 19 customers here. I'd -- I'd have to look into it 20 further to -- to give you a better explanation.</p> <p>21 Q. Okay. I'm going to turn to Exhibit 38. 22 Exhibit 38, why don't you take a look. I think you 23 authored this document.</p> <p>24 Well, I'm sorry, you didn't author. This</p>	<p style="text-align: center;">Page 265</p> <p>1 California division?</p> <p>2 A. Yes.</p> <p>3 Q. What is Smartsource customers?</p> <p>4 A. Smartsource is a generic program run by 5 H.D. Smith to increase sales of generics. And I'm not 6 avoiding your question. I'm getting my head around 7 it --</p> <p>8 Q. Yeah.</p> <p>9 A. -- Smartsource. It's a -- it's not a -- 10 it's not a separate division. It's a program where 11 they have -- market to -- to customers to increase 12 generic sales.</p> <p>13 Q. Did that include controlled substances 14 like opioids?</p> <p>15 A. They are not -- they do not sell C-IIIs.</p> <p>16 Q. Okay. So no Smartsource customers receive 17 C-IIIs?</p> <p>18 A. And they weren't allowed to have -- we 19 wouldn't sell them controlled substances unless we had 20 profiles and vetted them out first.</p> <p>21 Q. Okay.</p> <p>22 A. So there may not have been profiles done 23 on all of them, but they weren't buying controls.</p> <p>24 Q. Without the profiles --</p>

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<p>1 A. Yes.</p> <p>2 Q. -- they can't get controlleds?</p> <p>3 Okay. So I want to skip down to the Site</p> <p>4 Visit Limitations section just below there.</p> <p>5 It says -- are you -- go -- can you go</p> <p>6 ahead and read that paragraph for us?</p> <p>7 A. "It was determined through testing that</p> <p>8 the customer site visit control is effective.</p> <p>9 However, with current resources the compliance team is</p> <p>10 unable to complete all needed site visits within the</p> <p>11 year. Current high risk customer population was</p> <p>12 estimated at 200, but is likely substantially larger</p> <p>13 than that. Only 37.5 percent of the current high risk</p> <p>14 customer population can be visited with current</p> <p>15 resources."</p> <p>16 Q. Do you agree with that site visit</p> <p>17 limitation assessment from Mr. Burchard? "You"</p> <p>18 meaning H.D. Smith. I should clarify.</p> <p>19 A. Yeah, I -- I understand.</p> <p>20 MR. PADGETT: Object to the form.</p> <p>21 BY THE WITNESS:</p> <p>22 A. I don't -- without more context around</p> <p>23 this, I don't recall what he was talking about here</p> <p>24 and what he was considering high risk customers and</p>	<p>1 me with more staffing, I'd take it.</p> <p>2 Q. Okay. I think earlier I asked you whether</p> <p>3 you had ever requested and were denied more staffing</p> <p>4 and your answer was no, right?</p> <p>5 A. No. We continually through my tenure</p> <p>6 increased our staff.</p> <p>7 Q. At the time that this audit was done and</p> <p>8 the findings clearly were routed to you, you were</p> <p>9 identified on the document as management owner and it</p> <p>10 was addressed to you, there is an audit recommendation</p> <p>11 of additional staffing to conduct these site visits.</p> <p>12 Do you recall whether or not any</p> <p>13 additional staffing was provided to you to achieve</p> <p>14 these site visits?</p> <p>15 A. I would have to have the dates of</p> <p>16 engagement, but I know that, you know, our -- from</p> <p>17 2010 our staffing did increase.</p> <p>18 Q. Do you know whether or not the high risk</p> <p>19 customer population which in this report is estimated</p> <p>20 at 200, whether or not that customer population was</p> <p>21 visited within the year?</p> <p>22 A. I would not know that without knowing who</p> <p>23 those customers are and I -- I don't know what his</p> <p>24 definition of the high risk customer base is.</p>
<p style="text-align: center;">Page 267</p> <p>1 how he estimated it at 200. I don't know what</p> <p>2 criteria he was using. He was an internal auditor</p> <p>3 with no compliance experience.</p> <p>4 Q. How many site visits could the compliance</p> <p>5 team conduct within one year in the year 2010, as</p> <p>6 staffed in 2010?</p> <p>7 A. I can't recall how many we had.</p> <p>8 The only way I can answer that is that</p> <p>9 I -- that's a -- site visits were -- were performed</p> <p>10 as -- on an as-needed basis for customers that we</p> <p>11 determined that we needed to go visit to do additional</p> <p>12 due diligence on and we did those in a timely manner.</p> <p>13 You know, they were -- I -- I had people in</p> <p>14 California, I had people in Florida, I had people up</p> <p>15 in the northeast, myself in the Midwest. We've used</p> <p>16 outside sources at times to do due diligence. So we</p> <p>17 were adequately staffed --</p> <p>18 Q. Okay. So --</p> <p>19 A. -- in my opinion.</p> <p>20 Q. -- do you disagree with the audit</p> <p>21 recommendation about additional staffing for</p> <p>22 completing customer profiles and visits?</p> <p>23 A. That's a loaded question because I thought</p> <p>24 we were adequately staffed, but if this would provide</p>	<p style="text-align: center;">Page 269</p> <p>1 Q. If you received this recommendation about</p> <p>2 your department compliance that used the term "high</p> <p>3 risk customer population," would you inquire of the</p> <p>4 auditor what he means by that?</p> <p>5 A. Without seeing my response, I don't know,</p> <p>6 but I'm assuming I would.</p> <p>7 Q. You don't recall sitting here how you</p> <p>8 handled the receipt of this report?</p> <p>9 A. No.</p> <p>10 Q. You have not used the term "high risk" to</p> <p>11 refer to your pharmacy customers, that's not a phrase</p> <p>12 that compliance uses?</p> <p>13 A. I -- I can't be certain that term has</p> <p>14 never been used.</p> <p>15 Q. By you?</p> <p>16 A. I may have.</p> <p>17 Q. Is there another term of art or euphemism</p> <p>18 that you might use within the compliance department to</p> <p>19 refer to customers that someone else may refer to as</p> <p>20 high risk?</p> <p>21 A. If someone referred a customer to me that</p> <p>22 they thought was high risk, it would be someone that</p> <p>23 we would do extensive due diligence, again --</p> <p>24 Q. What is another --</p>

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<p style="text-align: right;">Page 270</p> <p>1 A. -- depending on who it was. 2 Q. What is another term that you would use to 3 describe such a customer? 4 A. If I was to use the term "high risk," I 5 would assume that they most likely would not be a 6 customer of ours anymore. I just -- I can't tell you 7 that that's a normal -- 8 Q. Let me give you a better, more concrete 9 example. 10 [REDACTED] 11 12 13 14 15 16 17 18 19 20 A. You know, and -- and it depended on 21 various times of our investigation of them and our -- 22 our investigation around the -- the -- the primary 23 prescriber, the pharmacy itself. 24 When we decided to stop doing business</p>	<p style="text-align: right;">Page 272</p> <p>1 A. No. 2 Q. And -- 3 A. Now I'm thinking that Mallinckrodt 4 instituted it. I don't know of -- I know -- I see 5 this date, 2012. I don't know where in the process, 6 if that was the beginning of when they instituted 7 these meetings, but, you know, they reached out to us 8 to meet with them and we met with them on a -- on a 9 regular basis. We had conversations with them 10 regularly. 11 [REDACTED] 12 13 14 15 16 17 18 19 20 21 22 23 24 [REDACTED]</p>
<p style="text-align: right;">Page 271</p> <p>1 with a customer or blocked our controls, when we 2 contacted DEA, we didn't use the term "high risk," we 3 used -- we just said that due to our -- basically due 4 to our compliance review, we were no longer going to 5 con -- provide this pharmacy with controlleds. 6 [REDACTED] 7 8 9 10 Q. Okay. 11 [REDACTED] 12 13 14 15 16 Do you recall receiving this document? 17 A. I'm sure I did. 18 Q. Do you recall attending a meeting with 19 Mallinckrodt about suspicious order monitoring? 20 A. I attended several meetings with 21 Mallinckrodt to discuss accounts and controlled 22 substances in general. 23 Q. Was that typical among your manufacturer 24 vendors?</p>	<p style="text-align: right;">Page 273</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 [REDACTED]</p>

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8 Q. Yeah, and I'm specifically referring to,
9 like, a compliance issues?

10 A. No.
11 Q. No.
12 A. We just did this as we agreed to meet with
13 them.
14 Q. Mallinckrodt approached you about
15 meeting --
16 A. They did.
17 Q. -- about suspicious order monitoring?
18 A. About controls, not about suspicious order
19 monitoring.
20 Q. Do you know the impetus, why Mallinckrodt
21 decided to start doing that? Did they share that with
22 you?
23 A. I do not know.
24 MR. MILLER: Hayden Miller on behalf of

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1 Mallinckrodt objecting to the form and scope.
2 BY MR. YOUNG:
3 Q. I'm sorry. I didn't hear your answer.
4 A. I do not know.

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1 Q. Do you use drug utilization reports on
2 pharmacies that have multiple distributors, is that
3 like a -- if -- if the pharmacy has multiple
4 distributors, then you do a drug utilization report or
5 is there no connection between the two?
6 A. It would depend on the circumstances.
7 Many times we wouldn't know that information.
8 Q. Okay. We'll shift gears to another
9 document.

10 MR. PADGETT: Maybe a --
11 MR. YOUNG: Break?
12 MR. PADGETT: -- heading down the stretch break?
13 We've been going a good --
14 MR. YOUNG: Do you guys want to take a break?
15 THE WITNESS: Sure.
16 MR. PADGETT: Yeah.
17 MR. YOUNG: Go off the record.
18 THE VIDEOGRAPHER: We are off the record at
19 4:13 p.m.
20 (WHEREUPON, a recess was had
21 from 4:13 to 4:24 p.m.)
22 THE VIDEOGRAPHER: We are back on the record at
23 4:24 p.m.
24 BY MR. YOUNG:

70 (Pages 274 to 277)

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<p>1 Q. Mr. Euson, do you recall your Texas 2 facility, I'll call it H.D. Smith Texas division, 3 receiving a -- a DEA, what do we call this, a Formal 4 Notification of Deficiencies in 2014?</p> <p>5 A. You'd have to show it to me.</p> <p>6 Q. I -- I will certainly do so. I just 7 wanted to see if you recall before I did. I'm handing 8 you Exhibit 41, which is a letter to H.D. Smith from 9 the DEA dated November 21, 2014.</p> <p>10 A. I don't recall seeing this. This -- I 11 wasn't at H.D. Smith at the time.</p> <p>12 Q. Okay. When you returned to H.D. Smith 13 most recently, is this something that you would have 14 been made aware of or just it happened while you were 15 gone and you would never learn of it?</p> <p>16 A. I'd have to read through this to see 17 exactly what it is detailing.</p> <p>18 Q. If you're not familiar with the substance 19 of this violation letter -- let me ask you: What did 20 you do to prepare for today's deposition?</p> <p>21 A. I went through --</p> <p>22 MR. PADGETT: Object to form.</p> <p>23 BY MR. YOUNG:</p> <p>24 Q. Well, I'm concerned because this is a</p>	<p>1 statement you made, which topic are you aligning with 2 this Exhibit 41?</p> <p>3 MR. YOUNG: What do you mean which topic, which 4 30(b)(6)?</p> <p>5 MR. PADGETT: Which 30(b)(6) topic that you are 6 suggesting he wasn't adequately prepared for.</p> <p>7 MR. YOUNG: Sure. Relating -- well, hold on a 8 minute here.</p> <p>9 MR. PADGETT: It doesn't really seem to fit 10 under administrative actions.</p> <p>11 MR. YOUNG: Your interact -- No. 7: "Your 12 interaction with the DEA related to the scheduling of 13 controlled substances."</p> <p>14 MR. PADGETT: Scheduling, that's not even close.</p> <p>15 MR. YOUNG: I'm just going through them one by 16 one.</p> <p>17 MR. PADGETT: There is nothing to prep on that.</p> <p>18 MR. YOUNG: Hold on. I've got to go to the 19 first one. While you are reading that.</p> <p>20 MR. PADGETT: Sorry. I'm pretty anal about 21 30(b)(6) reps.</p> <p>22 MR. YOUNG: Oh, we'll -- we'll present this 23 tomorrow, too, sorry. Don't worry.</p> <p>24 Where is my little guy. Here we go. I've</p>
<p style="text-align: center;">Page 279</p> <p>1 letter from the DEA indicating violations at a Texas 2 facility and a representative from H.D. Smith needs to 3 be here today to talk about CSOMP and its suspicious 4 order monitoring violations and you're not familiar 5 with this -- this incident in H.D. Smith's history.</p> <p>6 And I want to understand is that because 7 this was overlooked or because it happened while you 8 were gone, did you fail to prepare for the -- this 9 type of information? This document was provided to us 10 by your counsel.</p> <p>11 MR. PADGETT: Object to form.</p> <p>12 You can answer.</p> <p>13 BY THE WITNESS:</p> <p>14 A. That wasn't my answer. My answer was, 15 yeah, I'd have to -- I said I'd have to read through 16 this to see what -- what the -- the violations are. I 17 may have when I came back seen this, I may not have. 18 I don't recall. But that doesn't mean that -- if I 19 read through this, I may be able to answer some of 20 your questions.</p> <p>21 BY MR. YOUNG:</p> <p>22 Q. Sure. Please take the time to read 23 through it.</p> <p>24 MR. PADGETT: In light of the -- kind of the</p>	<p style="text-align: center;">Page 281</p> <p>1 got it.</p> <p>2 The First Amended Notice, Letter H, Letter 3 G, Letter A, Letter I, Letter J, specifically 4 Letter M. That ought to do it.</p> <p>5 BY MR. YOUNG:</p> <p>6 Q. Are you familiar with the document?</p> <p>7 A. I know what it is. I'm not familiar with 8 it. I -- I may have seen it, I may not have.</p> <p>9 Do you have any other information as far 10 as like the -- the response that we would have written 11 within 30 days?</p> <p>12 Q. I'm really limited to what your counsel 13 provides to me, so I'm not --</p> <p>14 A. I mean, this -- I mean, this is not like a 15 formal action. It's a -- you know, it's a 16 notification, you have time to -- you have 30 days to 17 address what they have noted in here, and I don't know 18 just from this letter, like as with three, with -- 19 with the order monitoring, you know, what -- what the 20 reference is.</p> <p>21 Q. Yeah, that's -- that's really what I 22 wanted to -- to focus on was No. 3.</p> <p>23 A. I don't know if there were specific 24 details that they gave the division that -- that</p>

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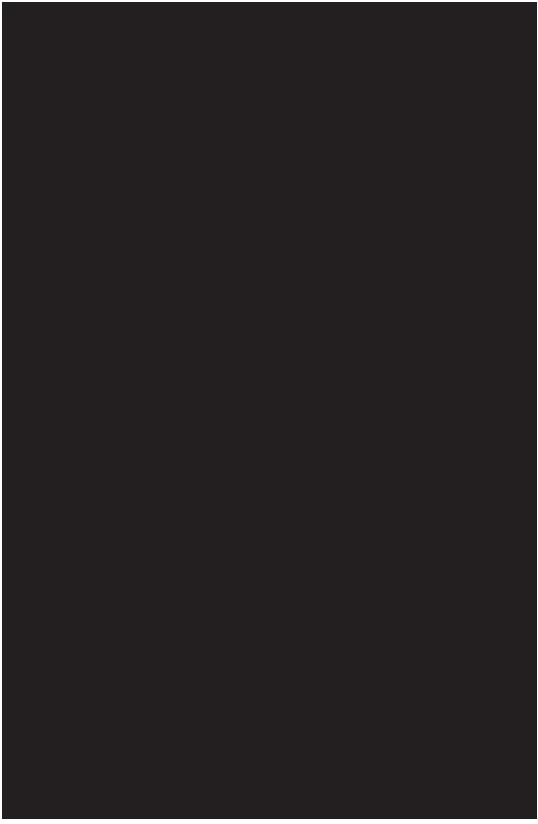
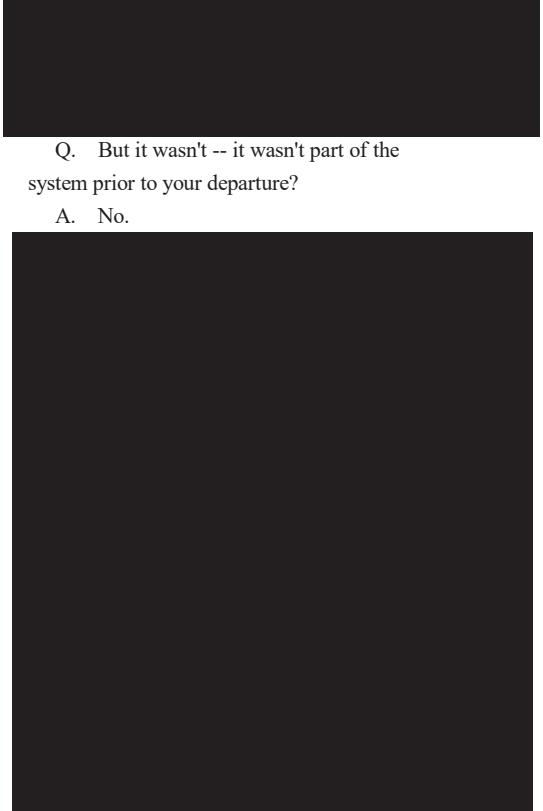
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<p>1 brought them to this conclusion. I -- I do not know 2 that based on the information that -- that's here in 3 this letter.</p> <p>4 Q. So earlier in the very beginning of this 5 deposition I asked you whether or not H.D. Smith had 6 ever been in violation of the CSA requirements, and I 7 believe your testimony was, no, it had not. Yet in 8 No. 3 of this letter, the DEA says:</p> <p>9 "The firm did not operate a system to 10 disclose to the registrant suspicious orders of 11 controlled substances in violation of 21 USC 827(d) 12 and 1301.74(b)(2)."</p> <p>13 So I understand your testimony today is 14 you're not familiar with this and you don't have a 15 background in understanding what happened in Texas, 16 but in light of this letter and what I've just read to 17 you, do you wish to change your testimony with regard 18 to whether or not H.D. Smith has always been in 19 compliance with the CSA?</p> <p>20 A. No, because this -- this letter doesn't 21 give us enough information to know where they are 22 going with this. You have -- you have 30 days to 23 respond. I don't recall that there was any official 24 letter of admonition or anything else that would have</p>	<p>1 H.D. Smith? 2 A. Yes. 3 Q. This is a pretty significant finding by 4 the D -- DEA? 5 A. Any -- any time -- 6 MR. PADGETT: Object to form. 7 BY THE WITNESS: 8 A. -- if you were to get any type of letter 9 like this we would take it seriously, because we take 10 our responsibility seriously. 11 BY MR. YOUNG: 12 Q. Do you recall during your tenure, so only 13 the time when you were there, receiving a letter like 14 this from the DEA? 15 A. Not particularly. 16 Q. When did you return to H.D. Smith? 17 A. During this time period? 18 Q. Yes, sir, after this letter. 19 A. May 31st, 2016. 20 Q. And you don't recall in 2016 or any point 21 thereafter discussing issues out of the Fort Worth 22 division relating to this DEA letter? 23 A. Not specifically, no. 24 Q. Who -- who held your position at the time</p>
<p style="text-align: center;">Page 283</p> <p>1 gone with this. So I don't know if this was explained 2 away, if it was, you know, satisfactory to DEA. There 3 is not enough information to answer your question just 4 based on this document.</p> <p>5 Q. That's what I was hoping to obtain from 6 your testimony today, but you're not familiar enough 7 to give me testimony.</p> <p>8 A. Well, not without knowing what the 9 response was and getting more background into this.</p> <p>10 Q. How about with regard to No. 1 of this 11 letter:</p> <p>12 "A controlled substance accountability 13 audit revealed the firm did not maintain complete and 14 accurate records of controlled substances distributed 15 by the firm. This is a violation of 21 USC 827(a)(3) 16 and 21 CFR 1304.21(a)."'</p> <p>17 Do you have any recollection as to whether 18 or not H.D. Smith responded to this particular aspect 19 of this Texas violation?</p> <p>20 A. I'm assuming they did.</p> <p>21 Q. Who would it have been at H.D. Smith that 22 would have responded?</p> <p>23 A. November 2014, I don't know.</p> <p>24 Q. Would this type of letter be a big deal to</p>	<p style="text-align: center;">Page 285</p> <p>1 of this letter, November 21, 2014? 2 A. There -- prior to my coming back a Tracey 3 Hernandez was the vice president of compliance and 4 security. I do not know her dates of -- of -- of 5 employment. I know after I left in 2013, one of my 6 compliance managers, Bill Stivers, assumed some of the 7 duties that I was doing, but without further 8 information regarding this, I can't answer that 9 question as to who would have responded to this.</p> <p>10 Q. Is this type of document something which 11 would have triggered a review by attorneys for 12 H.D. Smith, either internal or external?</p> <p>13 MR. PADGETT: I'll object to form. 14 Go ahead.</p> <p>15 BY THE WITNESS: 16 A. Again, without the proper context on these 17 three items, I can't answer that. I don't know.</p> <p>18 BY MR. YOUNG: 19 Q. If you received a letter like this when 20 you were the chief of compliance, what would you do 21 with it?</p> <p>22 A. I would have investigated it. I would 23 have gotten with the -- Tim Van Bakel who was the 24 operations manager at that division and discussed what</p>

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<p style="text-align: right;">Page 286</p> <p>1 the findings were --</p> <p>2 Q. Is Mr. Van Bakel --</p> <p>3 A. -- and all of the situa- -- you know, the</p> <p>4 situation surrounding it.</p> <p>5 Q. Is he still with the company?</p> <p>6 A. He is.</p> <p>7 Q. Do you know whether or not he is still in</p> <p>8 charge of the Texas division?</p> <p>9 A. He is. They have since moved.</p> <p>10 Q. If you received a letter like this, would</p> <p>11 you refer this or forward it to inside or -- or</p> <p>12 outside counsel for the company?</p> <p>13 A. Again, it would have -- it would have</p> <p>14 depended on the circumstances surrounding this and if</p> <p>15 there was explanations or remedies, it -- it -- it</p> <p>16 would all depend.</p> <p>17 Q. I want to show you -- I'm going to move</p> <p>18 off of this document. You don't have any particular</p> <p>19 knowledge about it.</p> <p>20 MR. YOUNG: I may want to revisit this document.</p> <p>21 I think we are going to reserve our rights to revisit</p> <p>22 this particular topic. It may be isolated to Texas.</p> <p>23 I don't know. But obviously we want to talk about the</p> <p>24 violations in Texas and what was done with them and</p>	<p style="text-align: right;">Page 288</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
<p style="text-align: right;">Page 287</p> <p>1 the witness isn't prepared today to talk about that.</p> <p>2 So we are going to reserve our rights to revisit that</p> <p>3 particular issue.</p> <p>4 MR. PADGETT: I'm going to object to the</p> <p>5 assumption of violations -- the allegations of</p> <p>6 violations.</p> <p>7 BY MR. YOUNG:</p> <p>8 Q. Okay. So, I want to show you now</p> <p>9 Exhibit 42-ish. Yes, Exhibit 42, if you will.</p> <p>10 And that one is particularly small. I</p> <p>11 apologize. You might be better served looking at the</p> <p>12 screen, although I'm not even sure that's a very good</p> <p>13 copy.</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 289</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>

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<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> 	<p>Page 290</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> 
<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> 	<p>Page 291</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p>1 2 3 4</p> <p>Q. But it wasn't -- it wasn't part of the system prior to your departure?</p> <p>A. No.</p> 

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1 Q. When did you -- when did you first see
2 that?

3 A. I don't know when I originally first saw
4 it. I had reviewed it.

5 Q. There is a section in that brief on Page 2
6 which says: "H_DMA's members have not only statutory
7 and regulatory responsibilities to detect and prevent
8 diversion of controlled prescription drugs" --

9 A. Wait. Wait. Where -- where are you --
10 MR. PADGETT: This, Page 2.

11 BY MR. YOUNG:

12 Q. Yeah, Page 2. It should be highlighted on
13 your -- your copy. That "H_DMA's members."

14 A. Okay.

15 Q. Okay. Can you go ahead and read that
16 paragraph for us? And then I want to ask you about
17 H.D. Smith's opinions about that paragraph.

18 A. "HDA's" -- "H_DMA's members have not only
19 statutory and regulatory responsibilities to detect
20 and protect diversion of controlled prescription
21 drugs, but undertake such efforts as responsible
22 members of society. The public health dangers
23 associated with the diversion and abuse of controlled
24 prescription drugs have been well recognized over the

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17 Q. Okay. That's it for that document.

18 Hold on. We are going to skip ahead a
19 little bit. 46. Okay.

20 I'm going to hand you Exhibit 46. Which
21 is a lengthy document. It is the amicus brief of the
22 H_DMA in support of Cardinal Health.

23 Have you seen that amicus brief before?

24 A. I have.

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1 years by Congress, DEA, H_DMA and its members, and
2 public health authorities."

3 Q. Okay. Does H.D. Smith acknowledge a
4 statutory and regulatory responsibility to detect and
5 prevent diversion of controlled prescription drugs in
6 order to protect society?

7 MR. PADGETT: Object to form.

8 BY THE WITNESS:

9 A. We have a regulatory responsibility to
10 maintain effective controls against diversion.

11 BY MR. YOUNG:

12 Q. That wasn't my question.

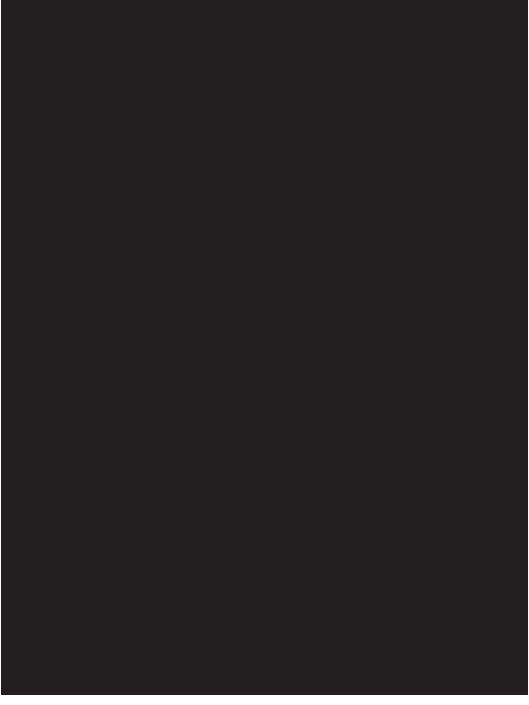
13 The H_DMA issued this amicus brief in
14 support of one of its members, Cardinal Health, and I
15 want to know to what extent you agree or disagree with
16 the positions espoused by the H_DMA in this brief.

17 The first sentence says "H_DMA members,"
18 and so here we are going to say, H.D. Smith has not
19 only a statutory and regulatory responsibility to
20 detect and prevent diversion of controlled
21 prescription drugs, but undertakes such efforts as
22 responsible members of society.

23 Do you agree or disagree with that
24 statement?

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<p>1 MR. PADGETT: Object to form.</p> <p>2 BY THE WITNESS:</p> <p>3 A. Again, in -- in our place in the supply 4 chain, our responsibility and our regulatory 5 responsibility is to maintain effective controls 6 against diversion.</p> <p>7 BY MR. YOUNG:</p> <p>8 Q. Do you agree or disagree with the next 9 sentence: "The public health dangers associated with 10 diversion and abuse have been well recognized over the 11 years."</p> <p>12 A. I agree with that.</p> <p>13 Q. Let's see. There is another highlighted 14 section.</p> <p>15 Can you turn to Page 3 with the 16 highlighted section that begins, "With the agency," 17 and in this case the agency being the DEA.</p> <p>18 Can you read that for us?</p> <p>19 A. "The agency has failed to provide 20 meaningful guidance to assist the regulated industry 21 in complying with DEA's interpretation of its 22 implementing regulations. HDMA respectfully submits 23 that, despite the agency's oft-recited refrain that 24 the regulations are 'clear,' the regulated industry</p>	<p>1 A. What I'm referring to is -- is guidance 2 that -- that we have asked for and not gotten. You 3 know, there are -- there are different, you know, 4 communications I've had with DEA where we have not 5 gotten clear guidance, there has been a shifting 6 interpretation of the order monitoring regulation 7 that's been in place for decades, and, you know, still 8 today we ask for assistance and get limited assistance 9 and guidance from DEA, who regulates us.</p> <p>10 BY MR. YOUNG:</p> <p>11 Q. Was the directive by the DEA to H.D. Smith 12 to create a suspicious order monitoring program to 13 identify and report suspicious orders, was that clear 14 to H.D. Smith, those obligations to create a -- a SOM 15 program, or was that unclear?</p> <p>16 A. Are you talking about the automated system 17 that we put in place?</p> <p>18 Q. Yes.</p> <p>19 A. That was not a mandate. We voluntarily 20 created that system.</p> <p>21 Q. Okay. Were -- were the laws, the 22 Controlled Substances Act and attendant regulations, 23 were those clear or unclear to H.D. Smith at the time 24 that it implemented its CSOMP program?</p>
<p style="text-align: center;">Page 303</p> <p>1 does not know the rules of the road because DEA has 2 not adequately explained them."</p> <p>3 Q. Does H.D. Smith agree or disagree with 4 that statement?</p> <p>5 MR. PADGETT: Object to form.</p> <p>6 BY THE WITNESS:</p> <p>7 A. I would agree that DEA has not 8 historically given clear guidance and has given 9 shifting guidance and -- to the regulated industry.</p> <p>10 BY MR. YOUNG:</p> <p>11 Q. You testified earlier about receiving the 12 two Joe Rannazzisi letters from the DEA, correct?</p> <p>13 A. Correct.</p> <p>14 Q. And I think you testified actually that 15 those were forms of guidance, right?</p> <p>16 A. Yes.</p> <p>17 Q. Is there something in the Rannazzisi 18 letters that you received in, is it '08 and '07, that 19 was unclear to H.D. Smith?</p> <p>20 MR. PADGETT: 'It was '06 and '07.</p> <p>21 BY MR. YOUNG:</p> <p>22 Q. '06 and '07. Sorry.</p> <p>23 MR. PADGETT: Object to form.</p> <p>24 BY THE WITNESS:</p>	<p style="text-align: center;">Page 305</p> <p>1 A. It was unclear to the way the DEA was 2 interpreting them and what DEA -- and what industry 3 practice was at the time.</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> 

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12 Q. Was pattern a required element of the
13 CSOMP program in 2010, the pattern of orders from
14 customers?

15 MR. PADGETT: I'll object to form.

16 BY THE WITNESS:

17 A. I'm not clear what you are asking.

18 BY MR. YOUNG:

19 Q. In 2010, after implementation of your
20 CSOMP program, there were instructions, or -- or I
21 should say communications with the DEA.

22 Is there anything that the DEA shared with
23 H.D. Smith that led H.D. Smith to conclude that it did
24 not have to include pattern or frequency in its CSOMP

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1 Q. Okay. Turning to Page 10 of this brief,
2 there is another highlighted section. Can you read
3 that for us?

4 A. "The societal costs of prescription drug
5 abuse are huge, and the development and implementation
6 of practices and procedures to detect and prevent
7 diversion are burdens that HDMA members willingly
8 bear."

9 Q. Do you agree that the societal costs of
10 prescription drug abuse are huge?

11 MR. PADGETT: Object to form.

12 BY THE WITNESS:

13 A. Define what the societal costs are. Are
14 we talking monetary or --

15 BY MR. YOUNG:

16 Q. HDMA, an organization that H.D. Smith is a
17 member of and serves on committees for and supports,
18 prepared this brief and this brief made this remark.
19 And I'm asking whether or not you an -- you agree or
20 disagree with this remark: "The societal costs of
21 prescription drug abuse are huge"?

22 A. And I'm trying to get more clarification
23 on what the definition of the societal costs are. I
24 was not there when this was drafted.

Page 307

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10 Q. But you've got no -- nothing in writing
11 from the DEA saying that that was acceptable?

12 A. They won't put anything in writing.

13 Q. Again, you don't have anything in writing
14 from the DEA?

15 A. I don't.

16 Q. You don't have anything in writing from
17 Congress that says that that was acceptable, right?

18 A. I don't.

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1 Q. Okay. So do you opine that the societal
2 costs of prescription drug abuse are not huge?

3 A. I'm just trying to get a better
4 clarification of what the societal costs are. If you
5 mean the societal costs are deaths of overdose, of
6 drug abuse, there is -- you know, statistically there
7 is an increasing number of people that die from
8 prescription drug overdoses and opioid overdoses
9 altogether.

10 Q. And would you call those societal costs?

11 A. It would be one of the definitions, yes.

12 Q. And would you refer to those as huge or
13 not huge?

14 MR. PADGETT: Object to form.

15 BY THE WITNESS:

16 A. I -- I do think they are huge. We -- you
17 know, we have a -- you know, we take our
18 responsibility serious.

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78 (Pages 306 to 309)

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1 business with them as a result of this information
 2 sharing with Mallinckrodt?
 3 A. We had, like, quarterly discussions with
 4 Mallinckrodt about customers, we would conduct due
 5 diligence on customers they brought to our attention,
 6 additional due diligence. There were also notices
 7 that Mallinckrodt would put out on certain customers
 8 that they were denying chargebacks to and many times
 9 it would not be customers of ours but we would block
 10 them in our system to make sure that they did not
 11 become customers of ours.

12 Q. Was Mallinckrodt the only manufacturer
 13 or -- or -- or vendor of yours that provided this
 14 level of information?

15 A. We had meetings fairly regular for a time
 16 with Purdue Pharma.

17 Q. Do you know whether or not Purdue Pharma
 18 shared information with H.D. Smith that resulted in
 19 H.D. Smith discontinuing servicing pharmacies?

20 A. I can't -- I can't answer that
 21 specifically. We did share information about
 22 pharmacies. They may have resulted, after we did
 23 additional due diligence where we would have
 24 discontinued selling controlled, but unless we get

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7 BY MR. YOUNG:

8 Q. Is that a two-way sharing, does H.D. Smith
 9 send information to Mallinckrodt only or does it also
 10 receive information from Mallinckrodt?

11 A. I don't know.

12 Q. Who at H.D. Smith is in charge of the
 13 information sharing with Mallinckrodt?

14 A. I don't know if we have anybody at
 15 H.D. Smith anymore that does that.

16 Q. Historically, who -- is there one
 17 person --

18 A. We had a -- we had a department that was a
 19 chargeback department but they are no longer.

20 Q. And who was the person that headed up the
 21 chargeback department, if you recall?

22 A. I -- I don't know.

23 Q. Do you know whether or not any pharmacy
 24 customers were identified and you ceased doing

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1 specific, I wouldn't know that answer.

2 Q. Those are the only two companies,
 3 Mallinckrodt and Purdue, that you recall H.D. Smith
 4 having this level of communication with?

5 A. We've had conversations in the past with
 6 other -- other manufacturers where orders of ours may
 7 have hit their suspicious order monitoring program,
 8 the manufacturers, and they would have called us to
 9 discuss that. I remember having discussions with
 10 Watson. I can't recall the others.

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79 (Pages 310 to 313)

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<p style="text-align: center;">Page 318</p> <p>1 Cleveland or Cuyahoga County pharmacy customers?</p> <p>2 A. Yes.</p> <p>3 Q. Have you done so within the last</p> <p>4 18 months?</p> <p>5 A. Again, I'm not certain on the dates.</p> <p>6 Q. Online pharmacies, does H.D. Smith still</p> <p>7 do business with online pharmacies?</p> <p>8 A. We don't do business with online</p> <p>9 pharmacies.</p> <p>10 Q. Have you ever done business with online</p> <p>11 pharmacies?</p> <p>12 A. Not knowingly.</p> <p>13 Q. I think you mentioned before that was</p> <p>14 something that the DEA was very focused on?</p> <p>15 A. Yes.</p> <p>16 Q. In the early 2000s.</p> <p>17 Did the DEA help H.D. Smith to identify</p> <p>18 online pharmacies that it was unknowingly doing</p> <p>19 business with?</p> <p>20 A. I don't think -- not in particular.</p> <p>21 Q. How did H.D. Smith identify online</p> <p>22 pharmacies that it was unknowingly doing business</p> <p>23 with?</p> <p>24 A. There was various ways. I mean, we -- we</p>	<p style="text-align: center;">Page 320</p> <p>1 Q. What does that mean?</p> <p>2 A. In my mind it refers to prescriptions in,</p> <p>3 for example, in Florida, in South Florida that may</p> <p>4 have been -- people from other areas of the country</p> <p>5 would visit pain clinics in Florida, get</p> <p>6 prescriptions, get them filled and go back.</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11 A. Nothing definitive. You know, even if we</p> <p>12 had dispensing information and a -- a pharmacy in</p> <p>13 South Florida was dispensing a prescription for</p> <p>14 someone that we -- we identified coming from 100 miles</p> <p>15 away, we don't know if that's in Florida or not. You</p> <p>16 know, we have done surveillance at pharmacies, I have</p> <p>17 done surveillance at pain clinics, I've seen</p> <p>18 out-of-state plates.</p> <p>19 Again, we don't conduct criminal</p> <p>20 investigations, so I will -- to be definitive, I can't</p> <p>21 give you an answer. My assumption would be that there</p> <p>22 was -- that was going on.</p> <p>23 Q. Do you recall whether any of the license</p> <p>24 plates that you observed in Florida pharmacies were</p>
<p style="text-align: center;">Page 319</p> <p>1 got -- if we had any documentation, I told you that we</p> <p>2 used to get -- Kyle Wright used to send out an e-mail</p> <p>3 on pharmacies that had been -- where another</p> <p>4 wholesaler had -- had stopped doing business with a</p> <p>5 particular pharmacy and we would make sure that we did</p> <p>6 not do business with those pharmacies.</p> <p>7 We -- you know, we -- just as -- as I</p> <p>8 answered, we never did any business with an online</p> <p>9 pharmacy that I am aware of.</p> <p>10 Q. Is H.D. Smith aware that prescription</p> <p>11 opioids dispensed in one city can end up in other</p> <p>12 cities?</p> <p>13 A. That's a --</p> <p>14 Q. You can answer. That's a terrible</p> <p>15 question.</p> <p>16 MR. PADGETT: I'll object to form. I join your</p> <p>17 objection.</p> <p>18 BY THE WITNESS:</p> <p>19 A. Yes.</p> <p>20 BY MR. YOUNG:</p> <p>21 Q. Let me ask it a different way.</p> <p>22 Are you familiar with the phrase "the oxy</p> <p>23 express"?</p> <p>24 A. Yes.</p>	<p style="text-align: center;">Page 321</p> <p>1 from Ohio?</p> <p>2 A. They could have been.</p> <p>3 Q. But you don't recall specifically?</p> <p>4 A. Not specifically.</p> <p>5 Q. Would there be evidence in the due</p> <p>6 diligence files of the South Florida pharmacies that</p> <p>7 you investigated that indicated the state of origin of</p> <p>8 the license plate?</p> <p>9 A. If it would have been specifically</p> <p>10 identified by the investigator.</p> <p>11 Q. Okay. Just two more, two more items.</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>

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1 Do you recall that particular pharmacy
2 customer or -- or customer, I should say?
3 A. Can you give me a second?
4 Q. Sure.
5 A. I don't necessarily remember this specific
6 customer.

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8 Q. Who would be the department within
9 H.D. Smith that would? Is that regulatory, legal?
10 A. I -- I don't know if we have anybody left.
11 Q. Okay. Let me just take a look at this
12 one.

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15 attention, final exhibit, final line of questions, get
16 excited everybody, this is regarding the Master
17 Pharmaceutical case or Masters Pharmaceutical case
18 which is a late entry, handwritten, No. 60 for you
19 keeping track.

20 Are you familiar with the Masters case?
21 A. I am.
22 Q. How are you familiar, how did you come to
23 know about the Masters case?
24 Do you recall the first instance?

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<p>1 A. It -- it -- I don't recall the first 2 instance. It was -- it went on for a while. I've 3 read this, I've read the 300-page part of it, so... 4 Q. In preparation for today's deposition, did 5 you specifically go back and read the Masters opinion? 6 A. I did. 7 Q. Oh, you did, okay. 8 Does -- well, let's -- let's start on 9 Page 4 of the opinion. There should be a 10 highlighted -- 11 MR. YOUNG: You don't have it? Oh, you don't 12 have yours. Oh. 13 MR. PADGETT: I can look off of with him. 14 MR. YOUNG: Okay. 15 MR. PADGETT: Do you want it on for the Elmo? 16 MR. YOUNG: The Elmo, yeah. 17 BY MR. YOUNG: 18 Q. Sorry. Page 4, last paragraph, it should 19 be highlighted. 20 Can you read that for us? 21 A. "The 'security requirement' at the heart 22 of this case mandates that distributors 'design and 23 operate a system' to identify 'suspicious orders of 24 controlled substances' and report those orders to DEA</p>	<p>1 Q. So the provision that you just read, do 2 you agree or disagree that that is the reporting 3 requirement under federal regulations? 4 A. "Design and operate a system and identify 5 suspicious orders of controlled substance," I agree 6 with that. 7 Q. It -- does it also include the shipping 8 requirement under federal regulations? 9 A. There is not a shipping requirement. 10 MR. PADGETT: Object to form. 11 BY MR. YOUNG: 12 Q. Okay. So the -- the parenthetical at the 13 end of the paragraph you just read says "the shipping 14 requirement." 15 Is it your testimony here today that there 16 is no such shipping requirement? 17 MR. PADGETT: Object to form. 18 BY THE WITNESS: 19 A. My understanding is in federal regulation 20 there is no shipping requirement. 21 BY MR. YOUNG: 22 Q. Okay. So the second half of the provision 23 that you just read, which the court has labeled "the 24 shipping requirement," H.D. Smith disagrees with?</p>
<p style="text-align: center;">Page 327</p> <p>1 (the Reporting Requirement). 21 CFR 1301.74(b). The 2 Reporting Requirement is a relatively modest one. It 3 requires only that a distributor provide basic 4 information about certain orders to DEA, so that DEA 5 investigators in the field can aggregate reports from 6 every point along the legally-regulated supply chain 7 and use the information to ferret out potential 8 illegal activity. Southwood" -- 9 Q. You can skip that. 10 A. Okay. 11 "Once a distributor has reported a 12 suspicious order, it must make one of two choices: 13 decline to ship the order, or conduct 'due diligence' 14 and if it is able to determine that the order is not 15 likely to be diverted into illegal channels, ship the 16 order (the Shipping Requirement)." 17 Q. So does H.D. Smith acknowledge that that 18 provision that you just read is the reporting 19 requirement under federal regulations? 20 MR. PADGETT: I'll object to form. 21 BY THE WITNESS: 22 A. The regulation states that we have to 23 report suspicious order when we discover. 24 BY MR. YOUNG:</p>	<p style="text-align: center;">Page 329</p> <p>1 A. It has been our -- you know, our practice 2 that when we discover a suspicious order and we 3 identify a suspicious order and we report that order 4 to DEA, we do not ship that. 5 Q. Yeah. That's not my question. 6 My question is whether or not H.D. Smith 7 disagrees with the court's encapsulation of what it 8 calls "the shipping requirement" under federal 9 regulations? 10 MR. PADGETT: Object to form. 11 BY THE WITNESS: 12 A. To my knowledge in the federal regulations 13 there is no shipping requirement. 14 BY MR. YOUNG: 15 Q. Okay. And what is the basis for the 16 conclusion that there is no shipping requirement? Is 17 it your individual interpretation or has H.D. Smith 18 reached a formal position or opinion on whether or not 19 the shipping requirement exists or doesn't exist? 20 A. It -- there is nothing in the federal 21 regulation that -- that specifies anything about a 22 shipping requirement. 23 Q. If H.D. Smith fails to follow the 24 reporting requirement, is that a violation of the law?</p>

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<p>1 A. If we fail to follow --</p> <p>2 Q. Report -- the reporting requirement?</p> <p>3 A. Suspicious order when we identify it?</p> <p>4 Q. Um-hum.</p> <p>5 A. It would be in violation of the</p> <p>6 regulation.</p> <p>7 Q. And if H.D. Smith reports a suspicious</p> <p>8 order and ships it, is that a violation of the federal</p> <p>9 requirements, federal regulations?</p> <p>10 MR. PADGETT: Object to form.</p> <p>11 BY THE WITNESS:</p> <p>12 A. Again, what time period are we talking?</p> <p>13 BY MR. YOUNG:</p> <p>14 Q. At any time period.</p> <p>15 A. Well, as we discussed, before our order</p> <p>16 monitoring program went into place, there were orders</p> <p>17 that were shipped and reported as suspicious after the</p> <p>18 fact as per the -- the industry standard and according</p> <p>19 to what we -- we were under the assumption that DEA,</p> <p>20 that was their interpretation and what we should be</p> <p>21 doing. Once we had our order monitoring system in</p> <p>22 place, we did not ship any orders that we identified</p> <p>23 as suspicious.</p> <p>24 BY MR. YOUNG:</p>	<p>1 BY MR. YOUNG:</p> <p>2 Q. Sir, again, that is not my question. My</p> <p>3 question is whether you agree or disagree with the</p> <p>4 statement I just made, that once an order has been</p> <p>5 reported as suspicious, you must make one of two</p> <p>6 choices, decline to ship or conduct due diligence and</p> <p>7 eventually ship?</p> <p>8 A. And we decline to ship.</p> <p>9 MR. PADGETT: Objection to form; asked and</p> <p>10 answered.</p> <p>11 BY MR. YOUNG:</p> <p>12 Q. I'm sorry?</p> <p>13 A. And we decline to ship.</p> <p>14 Q. Has there ever been an occasion in which</p> <p>15 H.D. Smith has reported a suspicious order yet shipped</p> <p>16 the suspicious order?</p> <p>17 MR. PADGETT: Objection; asked and answered.</p> <p>18 BY THE WITNESS:</p> <p>19 A. What time period?</p> <p>20 BY MR. YOUNG:</p> <p>21 Q. At any time.</p> <p>22 A. As we discussed earlier, before our</p> <p>23 automated system it was an after-the-fact review by</p> <p>24 the operations manager and we reported orders as</p>
<p style="text-align: center;">Page 331</p> <p>1 Q. So the provision of the Masters case,</p> <p>2 which you disagree with, essentially says what you</p> <p>3 just described, but you disagree with it and I want to</p> <p>4 just make sure because this is an important aspect of</p> <p>5 this case. It's important for the court and the jury</p> <p>6 to understand whether or not H.D. Smith recognizes and</p> <p>7 agrees with the Masters opinion on a shipping</p> <p>8 requirement or disagrees with it. So you have to</p> <p>9 indulge me while we revisit this one more time.</p> <p>10 What the -- what the opinion says is once</p> <p>11 a distributor has reported a suspicious order, so the</p> <p>12 suspicious order has been reported, it must make one</p> <p>13 of two choices, decline to ship the order or conduct</p> <p>14 some due diligence and if it is able to determine that</p> <p>15 the order is not likely to be diverted into illegal</p> <p>16 channels, ship the order.</p> <p>17 Do you agree or disagree that that is the</p> <p>18 law under federal regulations?</p> <p>19 MR. PADGETT: Object to form.</p> <p>20 BY THE WITNESS:</p> <p>21 A. As a practice, if we report a suspicious</p> <p>22 order, we do not ship it. As far as a -- a shipping</p> <p>23 requirement in the federal regulations, there isn't</p> <p>24 one.</p>	<p style="text-align: center;">Page 333</p> <p>1 suspicious and they had already been shipped.</p> <p>2 Q. So your testimony is that H.D. Smith has</p> <p>3 never identified a suspicious order and shipped a</p> <p>4 suspicious order?</p> <p>5 A. If we identified a suspicious order, we</p> <p>6 did not ship it.</p> <p>7 Q. So any occasion in which we found a</p> <p>8 suspicious order or an order that met the definition</p> <p>9 of suspicious and H.D. Smith shipped it, that would be</p> <p>10 a violation of the CSA?</p> <p>11 MR. PADGETT: Object to form.</p> <p>12 BY THE WITNESS:</p> <p>13 A. Who is making the definition -- who is</p> <p>14 making the determination of whether it is suspicious?</p> <p>15 BY MR. YOUNG:</p> <p>16 Q. Any occasion in which an order meets the</p> <p>17 criteria identified by the regulations as a suspicious</p> <p>18 order and was shipped by H.D. Smith, that would be a</p> <p>19 violation of the CSA?</p> <p>20 MR. PADGETT: Object to form.</p> <p>21 BY THE WITNESS:</p> <p>22 A. Our -- our system was designed to -- to</p> <p>23 identify potential orders that may be suspicious.</p> <p>24 Because they hit our system did not make them</p>

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<p style="text-align: center;">Page 334</p> <p>1 suspicious. It was after we determined whether they 2 were suspicious or not. 3 BY MR. YOUNG: 4 Q. Is the determination of whether an order 5 is suspicious or not solely within the purview of the 6 distributor or is it an objective evaluation? 7 MR. PADGETT: Object to form. 8 BY THE WITNESS: 9 A. There is no definitive definition of what 10 constitutes a suspicious order. 11 BY MR. YOUNG: 12 Q. And one final question. For the time 13 period that H.D. Smith's CSOMP program did not include 14 pattern or frequency, so it was only a threshold 15 basis, if there were orders that deviated 16 substantially on pattern or frequency and yet were 17 shipped, would that be a violation of the CSA? 18 MR. PADGETT: Object to form. 19 BY THE WITNESS: 20 A. To my knowledge we never shipped an order 21 that we identified as suspicious during the CSOMP 22 program. 23 BY MR. YOUNG: 24 Q. That wasn't my question.</p>	<p style="text-align: center;">Page 336</p> <p>1 REPORTER'S CERTIFICATE 2 3 I, JULIANA F. ZAJICEK, C.S.R. No. 84-2604, 4 a Certified Shorthand Reporter, do hereby certify: 5 That previous to the commencement of the 6 examination of the witness herein, the witness was 7 duly sworn to testify the whole truth concerning the 8 matters herein; 9 That the foregoing deposition transcript 10 was reported stenographically by me, was thereafter 11 reduced to typewriting under my personal direction and 12 constitutes a true record of the testimony given and 13 the proceedings had; 14 That the said deposition was taken before 15 me at the time and place specified; 16 That I am not a relative or employee or 17 attorney or counsel, nor a relative or employee of 18 such attorney or counsel for any of the parties 19 hereto, nor interested directly or indirectly in the 20 outcome of this action. 21 IN WITNESS WHEREOF, I do hereunto set my 22 hand on this 29th day of November, 2018. 23 24 JULIANA F. ZAJICEK, Certified Reporter</p>
<p style="text-align: center;">Page 335</p> <p>1 The CSOMP program did not have pattern and 2 frequency, at least until 2015, as elements of it. So 3 did H.D. Smith ship orders that deviated substantially 4 under the regulations, under the CSA on pattern and 5 frequency, not -- not threshold, on pattern and 6 frequency, did it ship those orders? 7 MR. PADGETT: Object to form. 8 BY THE WITNESS: 9 A. I can't answer that definitively and/or if 10 they would have been identified as suspicious or not. 11 MR. YOUNG: Okay. No further questions. 12 MR. PADGETT: No questions here. 13 MR. YOUNG: All right. Prepare for Day 2. 14 THE VIDEOGRAPHER: We are off the record at 15 5:42 p m. 16 (Time Noted: 5:42 p m.) 17 FURTHER DEponent SAITH NOT. 18 19 20 21 22 23 24</p>	<p style="text-align: center;">Page 337</p> <p>1 DEPOSITION ERRATA SHEET 2 3 Assignment No. 200754 4 Case Caption: In Re: Opiate Litigation 5 6 DECLARATION UNDER PENALTY OF PERJURY 7 8 I declare under penalty of perjury that I 9 have read the entire transcript of my Deposition taken 10 in the captioned matter or the same has been read to 11 me, and the same is true and accurate, save and except 12 for changes and/or corrections, if any, as indicated 13 by me on the DEPOSITION ERRATA SHEET hereof, with the 14 understanding that I offer these changes as if still 15 under oath. 16 17 GEORGE EUSON 18 19 20 SUBSCRIBED AND SWORN TO 21 before me this day 22 of , A.D. 20___. 23 24 Notary Public</p>

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